

Board of Equalization

Board Meeting Reference



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FOREWORD

Foreword

The Board of Equalization

In 1879, the Board of Equalization was established under the California Constitution to regulate county assessment practices, equalize county assessment ratios, and assess properties of intercounty railroads. In subsequent constitutional and statutory amendments, the Board was directed to administer tax, fee, and appellate programs to support state and local government.

Today, the Board collects taxes and fees that provide more than 36 percent of the annual revenue for programs supporting transportation, education, health care, public safety, parks, social services, housing, environmental protection, and natural resource management.

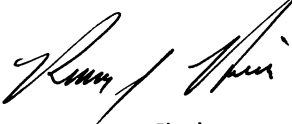
The Board is responsible for administering the state's sales and use, fuel, alcohol, tobacco, and other taxes, and for collecting fees that fund specific state programs. More than one million businesses are registered with the agency.

The Board sets the market value of California's public utilities and railroads and of private railroad car companies that operate in California. The Board also plays a significant role in California local property tax assessment and administration.

Members of the Board meet monthly in Sacramento and periodically in the Los Angeles area to hear and decide appeals from taxpayers, adopt regulations, perform ministerial functions, and set policy for the direction of its staff. The Board appoints an Executive Director to implement its policies and manage the activities of Board staff.

Purpose of This Reference

This *Board Meeting Reference* is intended to be a working guide and useful tool for Board Members and management staff who participate in Board meetings. It covers Board meeting-related processes, procedures, and practices. It is based on the controlling Constitutional provisions, statutes, and regulations. The Board Proceedings Division will periodically revise the reference to keep it current. All suggestions and revision requests should be directed to the Board Proceedings Division.



Ramon J. Hirsig
Executive Director

1. BOARD ORGANIZATION

Board Organization

Board

The five Members of the Board, who serve concurrent four-year terms, constitute the nation's only elected tax commission. Four Members are elected directly from constitutionally defined districts within the state. The State Controller, who is elected at large, serves as the Board's fifth Member.¹

Chair

Generally, at its first meeting of the calendar year, the Board elects a Chair and Vice Chair for the year.² A majority vote of a quorum is required to elect the Chair or Vice Chair.

The Chair approves Board meeting agendas. The Chair's boardroom responsibilities include convening and adjourning Board meetings, calling agenda items, and conducting hearings and the subsequent Board vote.

The Chair serves as a member of the Franchise Tax Board along with the State Controller and the state Director of Finance. The Chair may designate his or her Deputy to serve at meetings of the Franchise Tax Board.³ In contrast with the Board of Equalization's constitutional origins, the Franchise Tax Board was established by statute.⁴

Board Committees⁵

The Chair may appoint Board advisory committees and committee chairs. The current Board Committees are

- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee

Board Member Deputy Participation in Board Actions

Except for the Controller (see next page), a Board Member may not designate a Deputy to serve at Board meetings. However, Board Members may designate individuals from their personal staffs to represent them on advisory committees and task forces.

Deputy Controller's Participation in Board Actions

The Controller may designate any Deputy to act on the Board to exercise the Board's statutory powers and duties.⁶ The written designation is maintained in the Board Proceedings Division. The Deputy Controller may not act on behalf of the Controller in the exercise of the Board's constitutionally imposed powers and duties. Therefore, the Deputy Controller may not participate in state assessee and private railroad car tax valuations or reassessments, or claims for refund filed under the Insurance Tax Law, Motor Vehicle Fuel Tax Law, or Alcoholic Beverage Tax Law. The Deputy Controller may participate in the adoption and issuance of written findings and decisions on reassessments, petitions, or claims previously heard and decided by the State Controller.

Board Member Vacancy

If a Member leaves office before his or her term expires, the Member's Chief Deputy is authorized to discharge the constitutional and statutory duties of the office until a successor assumes office.⁷

Powers Conferred on the Executive Director by Resolution Adopted by the Board⁸

"RESOLVED, That Ramon J. Hirsig, as Secretary of this Board, is hereby designated to act as its chief executive officer on and after April 1, 2004, with the title 'Executive Director,'

"RESOLVED, That the Executive Director shall have full authority to exercise, perform, and discharge any and all duties, powers, and functions vested in or imposed upon the Board by any provision of law and otherwise, unless (1) the duty, power or function is one that can only be exercised, performed, or discharged by the Board in session expressly for that purpose, or (2) the Board expressly reserves the delegation of the duty, power, or function subject to the approval of the Board; and be it further

"RESOLVED, That all of the authority hereby delegated is to be exercised under the general direction of the Board and is in accordance with policies enunciated by the Board, and that such delegation shall not constitute the relinquishment of any power, jurisdiction, or responsibility of the Board; and be it further

"RESOLVED, That the authority hereby granted to the Executive Director shall include, but shall not be limited to, the following:

(a) Execution of any and all personnel documents as the appointing power. Prior to the execution of such documents the Executive Director shall: (1) obtain Board approval for all appointments of personnel at the Career Executive Assignment (CEA) level; (2) obtain approval of the Board Member in whose District in which appointments are located for all District personnel appointments; (3) notice at least monthly the Board of all other personnel appointments; and (4) obtain Board approval for all position upgrades

which result in a change of classification at the CEA level and above before such requests are submitted to the Department of Personnel Administration;

(b) Execution of any and all budgetary and fiscal documents for and on behalf of the Board. Prior to the submission of the annual budget and all Budget Change Proposals, the Executive Director shall obtain the explicit approval of the Board before submission to the Department of Finance except that Board staff may develop, without prior Board approval, Budget Change Proposals resulting from newly enacted legislation within the ten-day Department of Finance deadline. If the Board majority does not act or the Board vote results in a tie, the Executive Director may submit the documents as proposed;

(c) Execution of any and all contracts for materials, services and supplies. Prior to the execution of such documents, the Executive Director shall obtain Board approval for any contract in which the amount of the contract exceeds \$1,000,000;

(d) Execution of any and all leases with respect to real and personal property. Prior to execution of such documents for any new office space, the Executive Director shall obtain approval of the Board Member in whose District such new office space is located and Board approval for all other new office space relating to the headquarters' operation;

(e) Execution of any and all releases of liens for which provision is made in those parts of the Revenue and Taxation Code wherein the Board is named as the administrative agency; this shall include the subrogation of such liens to other liens or encumbrances, as well as the determination for or on behalf of the Board of whether or not the taxes, interest, and penalties secured by liens on property as to which liens are to be released or subordinated are sufficiently secured by a lien or liens on other property, as well as the determinations for or on behalf of the Board that a release or subordination of any lien for which provision is made in the Revenue and Taxation Code will not endanger or jeopardize the collection of taxes, interest and penalties;

(f) Execution on behalf of the Board of any certificates for which provision is made by any part of the Revenue and Taxation Code with respect to the amount of taxes, interest, and penalties that are due thereunder; and be it further

“RESOLVED, that in the absence of the Executive Director, the authority vested in the Executive Director by this resolution, or any other resolution now in effect or adopted hereafter by the Board, shall be exercised by the Executive Director’s designee, or by the person named by the Board as Acting Executive Director.”

Designation of Acting Executive Director

When the Executive Director is absent or otherwise unavailable to perform the duties of the office, the Chief Counsel may perform any and all of those duties. When performing those acts, the Chief Counsel will be designated as Acting Executive Director.

In addition, the Executive Director may designate one or more other persons to be Acting Executive Director and may designate the order in which the designees are to serve. An Acting Executive Director may also designate another Acting Executive Director if necessary.

Attorney General

Relationship to the Board¹⁰

The Attorney General is the chief legal officer of the state and the legal advisor to the Board. The Attorney General advises and represents the Board on legal matters when requested to do so.

Informal and Formal Opinions¹¹

The Board may ask the Attorney General to provide an opinion regarding a Board matter. Informal opinions may be oral or in the form of an informal letter. Formal opinions are initiated by a written request from the Executive Director on behalf of the Board. The formal opinion is in the form of a letter directed to the Board and is published if it concerns a question of general importance.

Consultations¹²

The Board's staff confers on a regular basis with representatives of the Attorney General's office concerning current litigation or other legal issues of current importance. At the request of the Board, a representative of the Attorney General appears before and consults with the Board. On occasion, at the request of the Board, the staff of the Board and the Attorney General consult with taxpayers concerning pending questions of importance.

Litigation¹³

The Attorney General is required by law to represent the Board in all actions brought against it for the recovery of taxes. The Attorney General may also represent the Board in legal actions the Board files in the performance of its official duties. In such instances, the Chief Counsel requests that representation in writing.

Clerk of the Board

The Chief of the Board Proceedings Division acts as the Clerk of the Board.

The Board and the Executive Director have delegated the following duties to the Chief of Board Proceedings:

- Review and adopt regulations and approve rulemaking calendars.¹⁴
- Sign Notices of Public Hearing, Interested Party letters, fiscal impact statements to the Department of Finance, and Orders to Adopt Regulations.¹⁵
- Prepare Board meeting open session minutes for Board approval.¹⁶
- Prepare Board meeting closed session minutes for the Executive Director's approval.¹⁷
- Manage Business Taxes Board-level cases, setting Board hearing and decision dates, assigning deadlines for necessary staff work in the Legal Appeals Division,

Sales and Use Tax Department, or Property and Special Taxes Department, and creating a priority protocol for Board cases.¹⁸

- Manage the Appeals Conference planning function.¹⁹
- Submit franchise and income tax appeals for Board decision on the written record and close appeal files upon withdrawal or resolution of appeals or failure to supplement appeals upon request.²⁰
- Specify deadlines in compliance with Board orders for post-hearing submissions from taxpayers, other state agencies, and Board staff; monitor those deadlines; grant extensions of time upon approval of the Board Chair; submit on the record those cases in which a party fails to file submissions by the specified deadline and specify the earliest possible date for Board consideration of those recommended decisions.²¹
- Report contribution disclosures on the record of a Board meeting if a hearing is held, or into the written record of a Board meeting if no hearing is held.²² (This delegation specifies the term “board staff” in Contribution Regulation 7009(d).)
- Postpone board hearings.²³ (This delegation specifies the authority described in Regulation 5076(c).)

Additional duties of the Chief of Board Proceedings are specified in the *Rules of Practice*.²⁴

Notes

- ¹ California Constitution, article XIII, section 17.
- ² State Board of Equalization Administrative Manual, section 0102.
- ³ Government Code section 7.6.
- ⁴ Government Code section 15700.
- ⁵ State Board of Equalization Administrative Manual, section 0102 and 0104.1.
- ⁶ Government Code section 7.9.
- ⁷ Government Code section 1775 and Attorney General Opinion 96-1106, December 31, 1996.
- ⁸ Government Code section 15604 and State Board of Equalization Administrative Manual, section 0108.
- ⁹ State Board of Equalization Administrative Manual, section 0106.
- ¹⁰ Government Code section 11040.
- ¹¹ Government Code section 12519.
- ¹² Government Code section 15610.
- ¹³ Government Code sections 11040 through 11043.
- ¹⁴ Delegated May 1, 2001.
- ¹⁵ Delegated February 2, 1998.
- ¹⁶ Delegated 1977.
- ¹⁷ Delegated 1992.
- ¹⁸ Delegated May 12, 1998.
- ¹⁹ Delegated July 1, 1998.
- ²⁰ Delegated November 19, 1992.
- ²¹ Delegated April 2, 2001.
- ²² Delegated April 2, 2001.
- ²³ Delegated April 2, 2001.
- ²⁴ California Code of Regulations, title 18, section 5010 et seq.

2. COMMITTEES

Committees

Board Committee Meetings and Reports¹

Board committees generally meet the first day of the Sacramento Board meeting. Deputy Directors or designated managers of the respective programs prepare the agendas. Each agenda or discussion item is supported by an issue paper, a legislative proposal, or a bill analysis, as appropriate. The Deputy Directors or managers prepare agendas in consultation with the committee chairs and distribute them in advance of the meetings to the Board Members, staff, and interested parties. Committees may discuss and recommend only those items included on their agendas. The Deputy Directors or managers draft the committee minutes for approval by the Executive Director and the committee chairs, and then for Board approval at the administrative session of that meeting, if possible. Only Board-approved recommendations are implemented. Board-approved committee minutes are distributed to Board Members and staff. The Deputy Directors or managers draft and maintain committee agenda procedures in consultation with the committee chairs.

- The *Business Taxes Committee* provides a forum for interested members of the public to express their views and present proposals regarding the provisions and policies related to Board-administered tax and fee laws.
- The *Customer Service and Administrative Efficiency Committee* addresses issues that affect customer service to taxpayers and feepayers, as well as administrative operations throughout the Board.
- The *Legislative Committee* recommends Board positions on bills before the Legislature and the Governor.
- The *Property Tax Committee* promotes uniformity and consistency in property tax assessment and administration by providing guidance to county assessors and their staffs and other property tax practitioners through the *Assessors' Handbook*, property tax rules, and other written guidelines.

Board-Sponsored Legislation

Once the Legislative recess begins in the fall, Board Members and Board staff may submit proposals for Board-sponsored legislation to the Board's legislative counsel. The counsel and the managers of each of the departments review each proposal. All Board Member proposals and the viable staff proposals generally appear on the Legislative Committee agendas for the November and December meetings.

The agenda includes a brief one or two-sentence fiscal impact statement. If insufficient time is available to prepare an impact statement before staff send out the original agenda, the updated agenda distributed with the staff recommendations must show the fiscal impact. For legislation that would result in a significant administrative impact to the agency (a subjective decision), the agenda should also include a statement of the amount of that impact.

Board staff prepare papers for all Board Member-suggested proposals stating the pros and cons of each issue. These are intended to give an impartial perspective on one Member's proposal to the other Members. The legislative counsel attempts to secure legislative authors for proposals approved by the Legislative Committee.

Board Positions on Legislation

At the Board's Legislative Committee meeting, the committee members recommend a formal Board position on each legislative proposal. The legislative counsel drafts the minutes of the Legislative Committee meeting for approval by the Executive Director and the committee chair before the Board administrative session.

The Board reviews the committee recommendations as part of its monthly Administrative Agenda and confirms, rejects, or revises them. Unless an item is deferred to the Board for discussion, Board approval of the minutes means that the Board adopts the committee's recommendation for a Board position on each legislative proposal listed in the minutes.

The Board takes one of three basic positions on legislation: support, oppose, or neutral. Variations of these positions may include *support concept*; *support, if amended*; *neutral, point out problems*; and *oppose, unless amended*. If a Member objects to the position recommended by the Legislative Committee on a bill or to the position taken by the full Board, the Member may submit for the record a written objection stating the Member's position. That objection will be included in the committee report.

The Board position is stated in letters of support, opposition, or neutrality. The Executive Director signs the letters and they are sent, as appropriate, to the author, Senate and Assembly committee chairs and members, and the Governor. The legislative counsel relays the Board's position in testimony at Senate and Assembly committee hearings.

Notes

¹ Rules of Order.

3. BOARD MEETINGS

Board Meetings

Powers of the Board and Procedural Constraints

The Board's powers are administrative. However, the Board is empowered to adopt rules and regulations,¹ generally regarded as a quasi-legislative function, and to hear and decide individual cases,² generally regarded as a quasi-judicial function.

There are two principal laws that constrain the manner in which the Board may adopt an interpretation of tax law. The first is the Bagley-Keene Open Meeting Act,³ which in part provides that a state body may take an action only if the item is properly noticed on the agenda of a meeting open to the public. The second is the Administrative Procedure Act,⁴ under which an interpretation of the Board must be adopted as a regulation if it is to have the force and effect of law.

Quorum⁵

Any three Members constitute a quorum. The Board cannot act unless a quorum is present. If a Member is disqualified from participating under the provisions of the Quentin L. Kopp Conflict of Interest Act of 1990 (Kopp Act),⁶ the conflict of interest provisions of the Political Reform Act,⁷ or by any other conflict of interest, that Member may not be counted to establish a quorum. If the Deputy State Controller is not authorized to participate because the matter before the Board is a constitutional function,⁸ then the Deputy State Controller may not be counted to establish a quorum. Whenever a Member states that he or she is "not participating" on a particular matter, that Member is not counted to establish the quorum. However, if a Member is entitled to participate, but elects to abstain on the vote, the Member is still counted as part of the quorum.

Voting

Minimum Vote for Board Action⁹

A majority vote is required for Board action. But the majority is defined as a majority of a *quorum*—two votes—rather than a majority of the *Members*—three votes. For example, a motion could carry if all five Members were present and they voted as follows: two abstaining, two voting yes, and one voting no.

Examples of situations in which two yes votes would carry a motion

Five Members present

- Two yes, two abstain, one no.
- Two yes, three abstain.

Four Members present

- Two yes, one abstain, one no.
- Two yes, two abstain.

Three Members present

- Two yes, one no.
- Two yes, one abstain.

Motions Fail on Tie Vote

Since a majority vote is required for all decisions or actions of the Board, motions fail on a tie vote.

Not Participating and Abstaining

A Member or the Deputy State Controller who is disqualified in a matter because of financial contributions or a financial interest is not entitled to vote and should state that he or she will “not participate” in the vote. The Deputy State Controller should take the same action when a constitutional matter is being considered. The correct notation in the minutes or announcement at the Board meeting is that the Member or Deputy State Controller is “not participating.” If a Member is entitled to participate, but chooses not to, the Member’s reason for not participating need not be disclosed on the record. However, if a Member is legally disqualified from participating, the Member must disclose the reason for the disqualification on the record.¹⁰ To “abstain” means that the Member or the Deputy State Controller is entitled to vote, but has chosen not to vote.

Contribution Disclosures¹¹

The Kopp Act disqualifies any Board Member, including the State Controller, from participating in an adjudicatory proceeding before the State Board of Equalization if any single party, participant, or agent of either has contributed at least \$250 to the Member in the preceding 12 months. However, if the Member returns to the contributor all contributions over \$249, the Member may participate in the proceeding. The law also requires a Board Member, party, participant, or agent to disclose any such contribution on the record. Board staff must inquire from all parties, participants, and agents whether any such contributions have been made to the Members. Board Proceedings then reports its findings to the Board.

Financial Conflict of Interest¹²

A Board Member who has a financial conflict of interest must do the following:

- Publicly identify, in enough detail to be understood by the public, the financial interest that causes the conflict of interest or potential conflict of interest.
- Recuse himself or herself from discussing or voting on the matter or from attempting to use his or her position to influence the decision.
- Leave the room until after the discussion, vote, or any other disposition of the matter is concluded, unless the matter is on an agenda reserved for uncontested matters.

Roll Call Vote¹³

A Member who is not present when the Chair calls the vote may not cast a vote unless the voting Members are tied. In this case, the Chair may leave the roll open until the conclusion of the Board meeting to allow the absent Member or Members to be present and vote. A Member's vote may not be added to the recorded vote after the roll call has ended.

It has been Board practice that a Member may ask the Chief of Board Proceedings to record in the minutes the way the Member would have voted if the Member had been present at the roll call. However, a Member's request to record his or her intentions is not a vote and will not be recorded as such.

A matter may be decided by unanimous consent,¹⁴ except during a teleconferenced meeting. All votes taken during a teleconferenced meeting must be by roll call vote.¹⁵

Participation in a Decision by a Member Not at the Hearing

When a matter has been taken under submission for a later vote, a Member who was not at the hearing may participate in the decision if the Member has made a reasonable effort to gain a substantial understanding of the record.¹⁶ The Chief of Board Proceedings will provide the hearing record and transcript to any Member upon request.

Expunging the Record

If the Board adopts a motion to expunge the record of a previous Board action, the motion, second, and vote to expunge are included in the meeting minutes. The vote or words expunged are omitted from the meeting minutes.

Rescinding the Vote

If the Board adopts a motion to rescind the record of a previous Board action, the motion, second, and vote to rescind are included in the meeting minutes. The action that is being rescinded remains recorded and is marked with a footnote that indicates the location of the final action recorded on the matter.

Reopening a Vote

A previously recorded vote may be reopened at the same meeting or a later meeting if all of the following apply:

- The decision is not final.
- A motion to reconsider is made by a Member who voted with the prevailing side.
- A majority of the Members vote affirmatively on the motion to reconsider.
- The matter has been properly noticed under the Bagley-Keene Open Meeting Act.

Forms of Motion

The following are suggested standard forms of motion. These forms in no way limit a Member's right to present his or her own motion for consideration.

Business Taxes

Petition for Redetermination

- Submitted for Decision
I move that the petition be submitted for decision.
- Submitted for Decision with Time to Provide Additional Information/Documents (30/30/30)
I move that the petition be submitted for decision and grant the petitioner 30 days to file supporting documents, the department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents and the department's response and provide its recommendation to the Board.
- Granting the Petition
I move that the petition be granted and the tax (or fee) be redetermined accordingly.
- Granting the Petition in Part
I move that the petition be granted with respect to (item or items) and denied with respect to (remaining item or items) and that the tax (or fee) be redetermined accordingly.
- Deleting a Penalty
I move that the (type of penalty) be deleted.
- Reducing Fraud Penalty to Negligence Penalty
I move that the fraud penalty be reduced to a negligence penalty.
- Denying the Petition
I move that the petition be denied and redetermined as recommended by the Appeals Division.
- Memorandum Opinion
I move that a draft Memorandum Opinion be prepared by the Appeals Division and brought back to the Board for adoption.
- California Victim Compensation and Government Claims Board (formerly the Board Of Control)
I move that the petition be denied and direct staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer.

Claim for Refund

- Submitted for Decision
I move that the claim for refund be submitted for decision.
- Submitted for Decision with Time to Provide Additional Information/Documents (30/30/30)
I move that the claim for refund be submitted for decision and grant the claimant 30 days to file supporting documents, the department 30 days to respond, and the Appeals Division 30 days thereafter to review the claimant's supporting documents and the department's response and provide its recommendation to the Board.
- Granting the Claim for Refund
I move that the claim for refund be granted.
- Granting the Claim for Refund for a Stated Amount
I move that the claim be granted in the amount of \$_____ and denied in the amount of \$_____.
- Granting the Claim for Refund for an Indefinite Amount
I move that the claim be granted in the amount of \$_____ and denied as to any amount in excess of \$_____.
- Denying the Claim for Refund
I move that the claim for refund be denied.
- California Victim Compensation and Government Claims Board (formerly the Board Of Control)
I move that the claim be denied and direct staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer.

Corporate Franchise and Personal Income Taxes

- Submitted for Decision
I move that the appeal be submitted for decision.
- Submitted for Decision with Time to Provide Additional Information/Documents (30/30/30)
I move that the appeal be submitted for decision and grant the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the appellant's supporting documents and the Franchise Tax Board's response and provide its recommendation to the Board.
- Granting the Appeal
I move to grant the appeal and reverse the action of the Franchise Tax Board.

- **Granting the Appeal in Part**
I move that the appeal be granted with respect to (describe item or items) and that the remainder of the appeal be denied.
- **Deleting a Penalty**
I move to delete the (type of penalty), otherwise sustain the action of the Franchise Tax Board.
- **Denying the Appeal**
I move to deny the appeal and sustain the action of the Franchise Tax Board.
- **Frivolous Appeal Penalty**
I move to sustain the action of the Franchise Tax Board and impose a frivolous appeal penalty in the amount of (\$ amount).
- **Formal Opinion**
I move that the matter be taken under submission and direct the Appeals Division to draft a proposed formal opinion in favor of (successful party), because (reason or reasons).
- **California Victim Compensation and Government Claims Board (formerly the Board Of Control)**
I move that the appeal be denied and direct staff to send a letter to the California Victim Compensation and Government Claims Board recommending favorable consideration of the request for relief filed by the taxpayer.

Property Taxes

- **Submitted for Decision**
I move that the petition (claim or application) be submitted for decision.
- **Granting the Petition (Claim or Application)**
I move that the petition (claim or application) be granted.
- **Abating the Penalty**
I move that the penalty be abated.
- **Denying the Petition (Claim or Application)**
I move that the petition (claim or application) be denied.

Rulemaking

- **Authorization for Public Hearing**
I move that we authorize publication of this proposed regulation for a public hearing.
- **Adoption of the Regulation**
I move that the regulation be adopted.
- **Taking a Regulation Under Submission at the End of the Public Hearing**
I move that the regulation be submitted for decision.

- Refer the Revised Language to the 15-Day File
I move to approve the revised language to the regulation as recommended and refer the regulation to the 15-day file.
- Approval of Changes to the Published Version
I move that the changes to the published version be approved.
- Adoption of an Emergency Regulation and Authorization to Publish
I move that the emergency regulation be adopted and authorize its publication for public hearing.

Board Meetings

The Board holds regular meetings in Sacramento each month and periodically holds meetings in the Los Angeles area as needed. Historically, the Board has also held one meeting a year in San Diego.¹⁷

Open Meeting Law

The Bagley-Keene Open Meeting Act¹⁸ provides that all meetings of the Board are open and public and that all persons shall be allowed to attend.

Public Agenda Notice¹⁹

Notice of any Board meeting or Board committee meeting must be given and made available on the Internet at least ten calendar days before the meeting. Any person who requests notice in writing must be sent a copy. The notice must include

- The name, address, and telephone number of a person who can provide further information before the meeting.
- The address of the Internet site where notices are made available.
- A specific agenda for the meeting that contains a brief description of the items of business to be transacted or discussed in either open or closed session. A description of an item to be transacted or discussed in closed session must include a citation of the specific statutory authority under which a closed session is being held.

Items cannot be added to the agenda after the notice is issued.

Typically, the Board Proceedings Division posts the Public Agenda Notice on the Board's website, www.boe.ca.gov, on a Friday, at least ten calendar days before the scheduled Board meeting. The division also e-mails the announcement of the posting to an e-mail list and mails a printed copy of the notice to interested parties who have requested the notice in writing.

Availability of Board Meeting Materials²⁰

Agendas for public meetings and all other material distributed to the Board Members for discussion or consideration at a public meeting are public records subject to disclosure unless a recognized exemption applies. Examples of exemptions would be the attorney-client privilege or taxpayer confidentiality. Public Board meeting materials are made

available to the public on the Internet as attachments to the Public Agenda Notice. The materials are also available in printed form on the day of the meeting.

With regard to the Board, the Bagley-Keene Open Meeting Act specifically provides that before taking final action on any item that does not involve a named taxpayer or feepayer, writings pertaining to the item that are public records and have been distributed by staff or individual Board Members to the Board Members prior to or during the meeting must be: (1) made available for public inspection at the meeting, (2) distributed to all persons who request or have requested copies of these writings, and (3) made available on the Internet.

Closed Sessions²¹

The Board may hold closed sessions for the following reasons:

- To consider the appointment, employment, or dismissal of a Board employee or to hear complaints or charges brought against Board employees.
- To consider matters pertaining to the appointment or removal of the Executive Director.
- To confer with or receive advice from its legal counsel regarding pending litigation when discussion in open session would prejudice the Board's position in the litigation.
- To hear confidential taxpayer appeals at the request of a party or to hear confidential taxpayer data when disclosing that data is prohibited by law.

The Board's Chief Counsel prepares and submits to the Board a memorandum stating the specific reasons and legal authority for the closed session. Prior to holding any closed session, the Board shall convene and disclose in an open meeting the general nature of all items to be discussed in closed session.

Teleconference Meetings

The Board may hold a meeting by teleconference as provided in the Bagley-Keene Open Meeting Act.²² The Board Proceedings Division coordinates the meeting in conjunction with the Business Services Section.

Planning Board Meetings

Board Proceedings Division

The Board Proceedings Division manages the workload of the Board meetings. The division forecasts, manages, and reports on Board hearing workload, plans and circulates Board meeting agendas and agenda materials, manages the contribution disclosure program, prepares Board meeting minutes and transcripts, and supervises the Board meeting support staff. The division manages the Board's franchise and income tax, homeowner and renter property tax assistance, and property tax appeals programs and the workload of the business taxes appeals program. The division administers the *Rules of Practice* and manages the administrative aspects of the Board's rulemaking program.

Board Workload Plan

In September of each year, the Chief of Board Proceedings prepares a Board workload plan for the following calendar year and submits it to the Board for adoption. The Chief then plans each meeting based upon the adopted plan, beginning 90 days before the meeting date. The chief may cancel a Board meeting day for lack of workload, but generally other meeting date or location changes are made by majority vote of the Board in session. The adopted meeting calendar is published on the Board's website.

Board Proceedings staff send planning memos to the various departments to notify them when Board meeting materials are due to the Executive Director for approval to be placed on the meeting agenda.

Board Meeting Agendas

The Board Proceedings Division determines the number of oral hearings to be heard by the Members and sets the order of the agenda. Approximately 30 days before the meeting date, the agenda is submitted to the Chair for approval. The Chair approves all Board meeting agendas. (See Appendix for the Public Agenda Notice Template.)

Any Member may place an item on the Board meeting agenda, subject to the Chair's approval or a majority vote of the Board in session. If the Chair denies a Member's request to place an item on the agenda, the Member may bring up the denied item during a Board meeting administrative session and request Board approval to place the item on a future agenda. When brought before the Board in this manner for future agenda placement, the item does not need to be on the Public Agenda Notice of the current meeting. For information on scheduling items on Board meeting agendas or for information on Board actions on agenda items, contact the Board Proceedings Division.

Oral Hearings

An oral hearing before the Board allows taxpayers to present unresolved tax or fee issues to the Board for decision. The five major categories of oral hearings are

- Homeowner and Renter Property Tax Assistance
- Corporate Franchise and Personal Income Tax
- Sales and Use Tax
- Special Taxes
- Property Taxes

Contribution disclosure is required for oral hearings.

Nonappearance Matters

Tax matters placed on nonappearance calendars require Board Member action, but do not require the taxpayer to appear. There are two types of nonappearance calendars, adjudicatory and consent.

Adjudicatory Calendar

A tax matter is placed on the "Tax Program Nonappearance Matters—Adjudicatory" calendar if any one of the following applies:

- The matter was previously scheduled on the Board’s Public Agenda Notice as an oral hearing.
- The matter was previously removed from the consent calendar for a separate discussion and vote.
- The matter is one about which a Board Member or Board Member staff previously contacted board staff or a party.

Contribution disclosure is required for this calendar.

Consent Calendar

A nonappearance tax matter is placed on the “Tax Program Nonappearance Matter—Consent” calendar if it does not meet the criteria described above.

Contribution disclosure is *not* required for this calendar.

Administrative Matters

Under the Board meeting agenda heading “Administrative Matters,” the Executive Director and staff present reports on matters of interest or policy matters requiring Board approval. Matters of a routine nature, such as retirement resolutions, adoption of Board meeting minutes, or rate setting, may be grouped on a consent agenda, but a Member may remove any of these matters for separate discussion.

Contribution disclosure is not required for Administrative Matters.

Conduct of Board Hearings

Formality

Board hearings are brief, to the point, and informal. The taxpayer is not required to use legal or technical language. If facts are disputed, a taxpayer may bring witnesses to testify or use documents or other exhibits to help explain the taxpayer’s position. Taxpayers may be represented by any person they choose, including but not limited to an attorney, accountant, bookkeeper, employee, or business associate.²³

Board Meeting Sign-In

Taxpayers, representatives, and witnesses scheduled for oral hearings are asked to complete and sign an appearance sheet. However, completing and signing an appearance sheet is voluntary.²⁴ Anyone who signs an appearance sheet to speak on an adjudicative matter will be asked to complete a contribution disclosure form.²⁵ Copies of the appearance sheet and contribution disclosure forms are given to the Members, the staff attorney presenting the case to the Board, the court reporters, and the vote recorder.

Exhibits

Parties to the hearing may provide exhibits for distribution to the Board Members and staff before the hearing. Legal staff will review exhibits and if any part of an exhibit contains the elements of a brief, and the party is represented by counsel, that part of the exhibit will not be accepted and will be returned to the submitting party.²⁶

Parties are encouraged to provide nine sets of copies of exhibits to the Board Proceedings Division for distribution to the Board Members and staff at least two weeks before the Board meeting.

Time Allocation for Oral Hearings

Before the oral hearing, Board Proceedings staff informs the taxpayer in writing how much time will be allowed for their hearing. At the Board meeting, the Chief of Board Proceedings announces the time allocations and informs the Board Chair when each period has elapsed.²⁷ Thirty-five minutes are allowed for each hearing: 10 minutes for the taxpayer, 10 minutes for the department (Board of Equalization department, Franchise Tax Board, and other state agencies), 5 minutes for the taxpayer rebuttal, and 10 minutes for Members' questions.

Taxpayers may ask for more time before the hearing. The Chief of Board Proceedings may grant these requests with the approval of the Chair. Generally, no more than an additional 10 minutes per party is granted to present complex cases. Board Proceedings staff will inform the parties in writing when a request for additional time has been granted.²⁸

Order of Presentation

Generally, the party requesting the Board hearing is the taxpayer. Following the introduction by the Board's representative, the taxpayer or the taxpayer's representative will present the arguments and testimony that support the taxpayer's position. Next, a representative for the department will respond to the taxpayer's arguments and set forth the department's position. Taxpayers will then be allowed to reply.

If the department requested the Board hearing, the presentation order is reversed.

Examination of Witnesses

The Board may place all witnesses under oath.²⁹ At the discretion of the Chair, the Chief of Board Proceedings swears in witnesses by administering this oath: "Do you swear to tell the truth in these proceedings?" After the witness is sworn, the Chief asks the witness to state his or her name for the record.³⁰ The Chair may allow additional time to the taxpayer for witness testimony.

Decisions

At the close of a Board hearing, the Members will either make an immediate decision or take the matter under submission. In either case, the taxpayer will receive written notification of the Members' decision by mail.

Public Comment

Opportunity is provided for the public to address the Board on any agenda item, including any item on the administrative agenda. *Exception:* If an opportunity for public comment was provided on the same item at a Board committee meeting and the item has not been substantially changed since the committee heard the item, the Board is not required to hear additional public comment.³¹

Board Proceedings staff will request anyone planning to speak before the Board to sign in. Signing or completing a public comment appearance sheet is voluntary. A speaker who declines to fill out the appearance sheet will not be precluded from speaking to the Members.³² Copies of the public comment appearance sheets are provided to the Chair, the court reporters, and the Chief of Board Proceedings.

Use of Interpreters³³

Persons participating in Board meetings who do not speak English or who have hearing impairments may contact the Board Proceedings Division before the Board meeting date to arrange for an interpreter.

Before the interpreter translates any sworn testimony given in a language other than English, the interpreter must take an oath that he or she will accurately and fully translate the questions from English to the other language and the taxpayers' or fee payers' answers from the other language to English.

To assist in making the record, the Chair should ask the taxpayer or fee payer to respond to questions in his or her own language and not in English.

Access to Board Meeting Sites³⁴

Board meeting sites are accessible to people with disabilities. Those who need special assistance may contact the Board Proceedings Division. People who need hearing assistance devices may request them from the sergeants-at-arms at Board meetings.

Minutes, Transcripts, and Audio

Board Minutes

Minutes are the summary record of each meeting. Draft copies are published on the Internet by the Board Proceedings Division and distributed to Board Members, the Executive Director, and various staff for review. After review and Board approval, the minutes are published on the Internet. Each year's complete set of approved minutes is bound into volumes. The bound volumes of Board minutes are the permanent record of Board actions required by the Government Code.³⁵ They are available for review in the Board Proceedings Division and the State Archives.

Closed Session Minutes

Closed session minutes are a record of topics discussed and decisions made at a closed session. The minute book is not a public record and is kept confidential.³⁶ The minute book is available to Members, the Executive Director, and the Chief Counsel. The Chief of Board Proceedings writes these minutes and the Executive Director approves them.

Incorporated Data and Public Disclosure

Selected supporting documents, known as incorporated data, are incorporated into the minutes by reference. Examples of incorporated data are public hearing materials, administrative matter materials, and reports and memos from Board staff provided to the Board Members for discussion or consideration at a public meeting. Incorporated data is

noted in parentheses in the text of the minutes and designated by exhibit numbers. Copies of incorporated data are available from the Board Proceedings Division.

The minutes of the Board meetings, and any exhibits submitted into evidence and incorporated by reference into the minutes, are public documents subject to disclosure. Some related documents are not subject to disclosure.

- **Business Taxes.** Board hearing summaries, Appeals Division Decision and Recommendations, and briefs are *not* subject to disclosure since they contain confidential taxpayer or feepayer information, which is normally not submitted into evidence. However, at the request of the parties, any materials marked as exhibits during the oral hearing may be entered into the record.³⁷
- **Franchise Taxes:** All briefs and exhibits submitted for the Personal Income Tax, Bank and Corporation Tax, or the Senior Citizens Property Tax Assistance and Postponement Law are subject to public disclosure before the Board's decision and incorporated into the minutes.
- **Property Taxes:** For state assessee and private railroad car company reassessment hearings, the petitioner must submit supporting evidence when the petition is filed. The petition and other documents submitted to the Board Members are incorporated by reference into the minutes as exhibits and are subject to public disclosure only after the Board has heard and decided the petition. For hearings on Applications for Review, Equalization and Adjustment of Taxable Property Owned by Local Governments, and Petitions for Claims for Welfare Exemption, supporting evidence may be submitted either before or at the hearing. Petitions or applications and other documents submitted to the Board Members are also incorporated by reference into the minutes as exhibits and are subject to public disclosure before the Board's decision.

Audio

Meetings are broadcast throughout the Board's Headquarters building. Public access is available through an independent contractor for a monthly fee. Board Members and staff may request compact disc recordings of the meeting from the Board Proceedings Division.

Transcripts³⁸

Transcripts of Board meetings are prepared by agenda item and only upon request. Transcripts are public records and subject to public disclosure. Requests may be directed to the Board Proceedings Division.

Completed transcripts and untranscribed shorthand notes are retained up to 12 years after the hearing date.³⁹

Board Meeting Staff

Clerk of the Board

The Chief of Board Proceedings acts as the clerk of the Board. The Chief's responsibilities are to plan, organize, and conduct the Board meeting in accordance with the provisions of the Open Meeting Act, the Kopp Act, the Political Reform Act, and the *Rules of Practice* and *Rules of Order*.

Appeals Division Attorney, Legal Department

The Appeals Division attorney introduces the parties and summarizes the issues involved in the appeal. As needed, the Appeals Division attorney provides advice to the Chair and other Board Members on the application of the law to the facts in the case and related procedural issues.

The Department Representative

The Board's departments are represented at oral Board hearings by an attorney from the Tax and Fee Programs Division of the Legal Department or a hearing representative from the Sales and Use Tax Department or the Property and Special Taxes Department. If the hearing is for corporate franchise or personal income tax, an attorney from the Franchise Tax Board will be assigned to represent the case before the Board. The role of the attorney or hearing representative is to state why the amounts at issue were properly assessed by the affected department, setting forth the relevant facts and applying the applicable law. The Deputy Director of the department (or designee) and the Assistant Chief Counsel of the Legal Department (or designee) are also present at the hearing to represent the department. The Deputy Director and the Assistant Chief Counsel will comment and answer questions as necessary.

In cases involving taxes or fees jointly administered by the Board and another state agency, an attorney or representative, or both, from that agency may be present and elect to make a presentation to support the agency's position.

Hearing Reporter

A certified court reporter reports all matters heard by the Board in open session. Electronic recording systems, installed at the Sacramento and Culver City hearing locations, provide an audiotape backup to the reporters.

Vote Recorder

A Board Proceedings staff member acts as the meeting vote recorder during open session to record the Board's actions and requests during the Board meeting.

Sergeant-at-Arms

The sergeant-at-arms is a Board employee serving a rotational career development assignment in addition to regularly assigned duties. The sergeant-at-arms serves for one to two years. Employees are selected for Sacramento, Culver City, and San Diego Board meetings.

The sergeant-at-arms performs miscellaneous duties such as making copies of documents, delivering messages to or from Members, setting up appropriate signs, logging the security officers in and out, and operating the Boardroom audiovisual system. During hearings, the sergeant-at-arms maintains order in the Boardroom.

The Internal Security and Audit Division is responsible for arranging for the California Highway Patrol to provide security at Board meetings.

Taxpayers' Rights Advocate

A member of the Taxpayers' Rights Advocate office is available before the Board meeting for any questions taxpayers may have regarding Board procedures or their rights as taxpayers.

Notes

- ¹ Government Code section 15606, subdivision (a), Revenue and Taxation Code section 7051 and other statutes in the tax and fee programs administered by the Board.
- ² California Code of Regulations, title 18, section 5010 et seq.
- ³ Government Code section 11120 et seq.
- ⁴ Government Code section 11340 et seq.
- ⁵ California Code of Regulations, title 18, section 5072.
- ⁶ Government Code section 15626.
- ⁷ Government Code section 87100 et seq.
- ⁸ Government Code section 7.9.
- ⁹ California Code of Regulations, title 18, section 5081.
- ¹⁰ Government Code sections 15626 and 87105.
- ¹¹ Government Code section 15626.
- ¹² Government Code section 87105.
- ¹³ California Code of Regulations, title 18, section 5081.
- ¹⁴ California Code of Regulations, title 18, section 5081.
- ¹⁵ Government Code section 11123, subdivision (b)(1)(D).
- ¹⁶ *Morgan v. U.S.* (1936) 298 U.S. 468 [80 L.Ed. 1288]; *Cooper v. State Board of Medical Examiners* (1950) 35 Cal.2d 242; *Allied Compensation Insurance Co. v. Industrial Accident Commission* (1957) 57 Cal.2d 115.
- ¹⁷ Government Code section 15609.
- ¹⁸ Government Code section 11120 et seq.
- ¹⁹ Government Code section 11125.
- ²⁰ Government Code section 11125.1.
- ²¹ Government Code sections 11126 and 11126.3.
- ²² Government Code section 11123.
- ²³ California Code of Regulations, title 18, section 5073.
- ²⁴ Government Code section 11124.
- ²⁵ Government Code section 15626.
- ²⁶ California Code of Regulations, title 18, section 5070, subdivision (d).
- ²⁷ California Code of Regulations, title 18, section 5077.
- ²⁸ Minutes of May 24, 2005 Customer Service and Administrative Efficiency Meeting.
- ²⁹ Government Code section 15617.
- ³⁰ Authority delegated to the Chief of Board Proceedings on April 19, 2001.
- ³¹ Government Code section 11125.7.
- ³² Government Code section 11124.
- ³³ Dymally-Alatorre Bilingual Services Act, Government Code section 7290 et seq.
- ³⁴ The Americans with Disabilities Act of 1990.
- ³⁵ Government Code sections 15605 and 15606.
- ³⁶ Government Code section 11126.1.
- ³⁷ California Code of Regulations, title 18, section 5079.
- ³⁸ California Code of Regulations, title 18, section 5083.
- ³⁹ Retention criteria set by Chief Counsel.

4. BUSINESS TAXES

Business Taxes

Business Tax Programs¹ Administered by the Board

The Sales and Use Tax Department administers the following tax programs:

- Sales and Use Tax
- Bradley-Burns Uniform Local Sales and Use Tax
- District Transactions and Use Tax

The Property and Special Taxes Department administers the following tax and fee programs:

- Aircraft Jet Fuel Tax
- Alcoholic Beverage Tax
- California Tire Fee
- Childhood Lead Poisoning Prevention Fee
- Cigarette and Tobacco Products Tax
- Cigarette and Tobacco Products Licensing Program
- Diesel Fuel Tax
- Electronic Waste Recycling Fee
- Emergency Telephone Users Surcharge
- Energy Resources Surcharge
- Hazardous Substances Tax
- Insurance Tax
- Integrated Waste Management Fee
- Interstate User Tax (IFTA)
- Marine Invasive Species Fee (also known as the Ballast Water Management Fee)
- Motor Vehicle Fuel Tax
- Natural Gas Surcharge
- Occupational Lead Poisoning Prevention Fee
- Oil Spill Response, Prevention, and Administration Fees
- Underground Storage Tank Maintenance Fee
- Use Fuel Tax
- Water Rights Fee

Petition and Appeals Process²

Petitions for Redetermination

In general, any person to whom a *Notice of Determination* is issued or any directly interested person may petition for redetermination within 30 days after the notice is served. If a petition for redetermination is not filed within the 30-day period, the determination becomes final.³ Petitions for redetermination must be filed in writing and state the specific reasons for the petition.⁴ When the petition for redetermination is received, Board staff send an acknowledgment of receipt letter to the petitioner. A person may make a written request for an oral hearing at the time the petition is filed or after the appeals conference. The request must be made within 30 days of receipt of the Appeals Division's decision.

Petitions for Reconsideration of *Notice of Successor Liability*

Any person issued a *Notice of Successor Liability* may petition for reconsideration in the same manner as a petition for redetermination.⁵

Petitions for Recovery of Seized Property

When Board of Equalization staff seize cigarettes, tobacco products, or cigarette or tobacco vending machines and contents,⁶ any person who owns or claims any interest in the property may petition for release or recovery of the property within 20 days of notice of the seizure on the ground that the property was erroneously or illegally seized.⁷ The petition must be filed with the Board Proceedings Division. The petitioner and the Department are invited to file position memorandums, then the Legal Department's Appeals Division prepares a summary of the case for Board hearing. The Board hears and decides petitions on seized property. A *Notice of Decision* is mailed to the petitioner within five days of the Board's decision.⁸

Petitions for Redetermination of a Jeopardy Determination

If the Board believes that delay will jeopardize collecting amounts due from a taxpayer or feepayer, the Board can make a "jeopardy determination." The jeopardy determination establishes the amount due and requires immediate payment.⁹

A person against whom a jeopardy determination is made may file a petition for redetermination. To be considered timely, the petition for redetermination must be filed within ten days after the *Notice of Jeopardy Determination* is served. The petitioner must also post security as prescribed by the Board within that ten-day period.¹⁰ If a petition is not filed within the ten-day period, the amount of the determination becomes final.¹¹ Petitions for redetermination must be in writing and state the specific reasons for the petition.

A person against whom a jeopardy determination is made may also apply for an administrative hearing within 30 days after receiving the *Notice of Jeopardy Determination*, in order to do one of the following:

- Establish that the determination is excessive.
- Establish that the sale of seized property should be delayed until the administrative hearing to avoid irreparable harm to the taxpayer or feepayer.
- Request the release of all or part of the property.
- Request a stay of collection activities.

But if the taxpayer or feepayer shows good cause, the Board may allow that person to file an application for administrative hearing after the 30-day limit and grant the applicant an administrative hearing.¹²

The administrative hearing is conducted as an appeals conference. If the petitioner does not agree with the Appeals Division decision, the petitioner may file a request for an oral hearing before the Board. The petition must be filed in writing within 30 days after the mailing date of the decision notice. The request will be processed using the same guidelines provided for in petitions for redetermination.

Petition for Local Tax Reallocation

The Board contracts with every California city, county, city and county, and redevelopment agency to administer the Bradley-Burns Uniform Local Sales and Use ("Local") Tax Law.¹³ The local taxes collected, less Board administrative costs, are distributed at least twice a quarter.¹⁴

Occasionally, and for a variety of reasons, the local tax is distributed to the wrong jurisdiction and there is a need to redistribute funds. Redistributions also arise when cities, counties, and special districts hire contractors to examine the Board's sales and use tax records to determine whether local taxes are properly allocated and those contractors identify misallocations.

The Board has established procedures for receiving, acknowledging, and processing inquiries from local jurisdictions and their consultants regarding local tax allocations. Specifically, Regulation 1807, *Process for Reviewing Local Tax Reallocation Inquiries*, is intended to implement, interpret, and make specific the related provisions of Revenue and Taxation Code sections 6066.3, 6066.4, and 7209 (sections 6066.3 and 6066.4 describe the collection of seller's permit information by cities and counties; section 7209 describes specific limitations on local tax redistributions).

The tax reallocation inquiry process involves five levels of review: the Allocation Group supervisor, the Refund Section supervisor, the Local Tax Appeals auditor, Board management, and ultimately the Board Members, who make a final decision at the hearing on the proper allocation. The Board's decision exhausts all parties' administrative remedies on the matter.

Claims for Refund

Taxpayers and fee payers do not have a statutory right to a hearing on a claim for refund. However, it is the policy of the Board to grant a hearing upon request if the claimant has not had a hearing on a petition for redetermination or if the claim is based on different grounds than the petition for redetermination.

Each claim for refund must be in writing and state the specific grounds upon which it is founded.¹⁵ When a claim is filed, the Board staff acknowledges it in writing. If additional documentation is needed, staff notifies the claimant, describes the information, and provides a deadline for submitting it.

Deferring an Appeal

Either party may request a deferral of the appeal process for sufficient cause or if both parties agree. However, when circumstances warrant, Board Proceedings may grant a deferral request by only one party. Generally, deferrals are granted in the following instances:

- The parties are negotiating for the purposes of reaching a settlement agreement.
- A case with similar issues that will affect the outcome of a decision in the appeal is pending before state court, federal court, the Board, or the Internal Revenue Service.
- The taxpayer files for bankruptcy.

Settlement, Sales and Use Taxes¹⁶

A person with an active sales or use tax matter in dispute may request a settlement of the disputed amounts at any time up to 45 days before the scheduled Board hearing date.¹⁷

If the taxpayer requests a settlement, the normal petition and appeals processes will continue. But the petition or claim will be presented to the Board for hearing or decision only if a settlement is not reached. If a settlement is reached, the taxpayer is required to waive all further appeal rights related to the settled liability, including future claims for refund.

The Board's Settlement Division staff evaluate all qualifying proposals. When staff and the taxpayer negotiate a settlement, the case is presented to executive management, and for large cases, to the Attorney General for comment and the Board Members for approval. The settlement is final when the Executive Director or his or her designee signs the settlement agreement.

Members of the Board are prohibited from participating in the settlement process except in the final approval phase.¹⁸ As a result, sales and use tax cases are excluded from settlement consideration if they have been heard before the Board or had any direct Member involvement.

Once a settlement matter has been scheduled by the Board Proceedings Division, staff can respond to an inquiry regarding that matter. If a Member has a question that he or she would like to resolve before the closed session, the inquiry should be directed to the

Chief Counsel. The matter will remain on the closed session agenda as scheduled. Questions may also be raised during the closed session discussion.

The Board's postponement of a decision on a settlement is not a disapproval of the recommendation, and the item will automatically be rescheduled for further consideration within 45 days. If the matter cannot be rescheduled within 45 days, staff will advise the Board that unless the Board disapproves the recommendation, it will be considered approved.¹⁹

Offers in Compromise

The Board provides an Offers in Compromise program for taxpayers and fee payers who do not have and will not have in the foreseeable future, the income, assets, or means to pay their tax liability in full. Taxpayers and fee payers qualify if they

- Have a final tax or fee liability on a closed account,
- Are no longer associated with the business that incurred the liability or a similar business,
- Do not dispute the amount of tax or fee owed, and
- Cannot pay the full amount owed in a reasonable amount of time.

The offer has to be in the state's best interest. Generally, an offer will be accepted when the amount offered is more than the Board can expect to collect within a reasonable period of time, typically from five to seven years. Offers in Compromise appear on the Administrative Calendar for Board approval.

Bankruptcy

While a taxpayer's or fee payer's petition for redetermination is pending, that person may file a petition for relief under the Bankruptcy Code. When the Board receives notice of a bankruptcy filing, it is the Board's policy to notify the filing party of the Board's intention to proceed with the administrative tax appeal process because the tax appeal falls within an exception to the automatic stay provisions of the Bankruptcy Code.²⁰ In asset bankruptcy cases, the Board may file a proof of claim in the bankruptcy case to preserve its right to receive a distribution from the bankruptcy estate in full or partial payment of that claim. If the Board files a proof of claim while an administrative tax appeal is pending, the taxpayer, fee payer, or bankruptcy trustee has a legal right to object to the claim. If any of those parties files an objection, the bankruptcy court determines whether the claim is valid.

Appeals Conference

An appeals conference is held to review the legal and audit issues raised in the petition for redetermination or claim for refund and provide the taxpayer or fee payer, the department assessing the tax or fee, and the Board with a proposed recommendation for resolving the issues presented in the appeal. The Board Proceedings Division schedules, postpones, and reschedules appeals conferences. The appeals conference is held by an attorney or an auditor ("appeals conference holder") from the Appeals Division. Conferences are scheduled as quickly as workload permits.²¹ The case may be expedited

if the taxpayer or feepayer is willing to come to Sacramento for a conference or willing to have a videoconference or telephone conference. Priority is given to certain cases, including cases where more than two years have elapsed since the petition or claim was filed.

Issuance of Decision and Recommendation

Within 90 days after the appeals conference and the submission of any additional documents, the appeals conference holder will issue a written report called a *Decision and Recommendation* (D&R). The D&R outlines the issues, the relevant facts, the parties' contentions, and the appeals conference holder's application of the pertinent law to his or her findings of fact. Each D&R concludes with a recommendation for resolving the issues raised in the appeal.²²

Options Letter

When the D&R is issued, an options letter accompanying the D&R advises the parties of the next action they may take to continue the administrative appeals process and deadlines for action.

Additional Conferences

Occasionally, it is necessary to conduct a second appeals conference. A supervising tax counsel in the Appeals Division decides whether a second conference is necessary.

Requests for Board Hearing

If the taxpayer or the department disagrees with the D&R, either party may request an oral hearing before the Board.²³ When a case involves certain programs jointly administered by the Board and another state agency (such as the Department of Toxic Substances Control or Department of Insurance), the other state agency may also request an oral Board hearing.

Board Hearing

The Board hearing is an oral presentation before the Board that allows taxpayers and fee payers to present their positions on unresolved issues remaining after their appeals conference. Taxpayers and fee payers may represent themselves at the oral hearing or designate any other person as their representative.²⁴

Acknowledgment Letter

After receiving a hearing request, the Board Proceedings Division will send the taxpayer or fee payer (or other party requesting a hearing) an acknowledgment letter. The letter will include the location and month of the oral hearing and contact information for a person in the Board Proceedings Division. Information on the conduct of the hearing, postponements, interest and penalties, and Taxpayers' Rights Advocate is included with the letter.

Notice of Hearing

Approximately 60 days before the hearing date, Board Proceedings Division will mail the taxpayer or feepayer a Board hearing packet. The packet includes a notice of hearing and a response form,²⁵ along with detailed information on the Board hearing, conduct of the Board, exhibits, postponement, settlement and the Taxpayers' Rights Advocate. Directions to the hearing location are also provided.

Failure to respond to the notice will result in the hearing being removed from the oral hearing calendar and placed on the nonappearance calendar. The Board will then make its decision based on the written record.²⁶

Postponement of Board Hearing

Before the hearing notice response deadline, the Chief of Board Proceedings may grant the taxpayer or feepayer one postponement if the parties agree and sufficient justification is provided. After the response deadline has passed, a postponement can only be granted if the parties agree and the requesting party demonstrates extreme hardship. In addition, the Board may, at its discretion, grant initial postponements and second postponements.²⁷

Filing Briefs²⁸

Any party may file a brief with the Chief of Board Proceedings. An opening brief must be filed 45 days before the Board hearing. A reply brief must be filed 30 days before the hearing. The Chief of Board Proceedings may grant a reasonable extension of time for filing a brief if the requesting party shows extreme hardship.

Staff Summary

Two weeks before the hearing, the Board Proceedings Division will send the taxpayer or feepayer a copy of the hearing summary prepared by the Appeals Division, which sets forth the remaining unresolved issues for the Board Members' decision.

Conduct of the Board

Detailed information regarding the Board meeting is provided in the "Board Meetings" section of this reference. That section includes general information, and information on voting, committees, planning Board meetings, and the roles and responsibilities of staff at a Board hearing.

Nonappearance Matters

Matters for Action

The Board meeting agendas include an agenda item for nonappearance matters for all tax programs entitled "Tax Program Nonappearance Matters." Cases brought before the Board by the Appeals Division appear on the agenda as "Legal Appeals Matters (Consent and Adjudicatory)." This item, commonly referred to as the "Final Action Calendar," typically includes a calendar including four kinds of matters:

1. Cases previously heard by the Board and taken under consideration, which are now presented to the Board for final action.
2. Hearing Request Waived. Cases in which a hearing was requested, then waived.
3. Hearing Notice Sent—No Response. Cases in which a hearing was requested but the taxpayer did not respond to the hearing notice.
4. Petitions for Rehearing. Petitions for rehearing on cases previously decided by the Board. The Board has sole discretion to grant a petition for rehearing. Typically, the Board only grants petitions for rehearing that involve new arguments or evidence.

The Board Proceedings Division prepares the Final Action Calendars and assembles materials for them.

Matters for Consideration

At each Board meeting where business taxes matters are considered, matters for consideration without hearing may be presented to the Board for approval. Items included on this calendar are redeterminations (tax and penalty amounts), relief of penalties or interest of any type on nonfinal liabilities, denials of relief of penalties or interest, denial of claims for refund, and relief of nonfinal liabilities due to reasonable reliance on written advice from the Board²⁹ where the dollar amount of such relief exceeds \$50,000. The calendar may also include relief of nonfinal liabilities due to reasonable reliance on written advice from the Board³⁰ for any amounts of \$50,000 or less not approved through delegation to the department, relief of fraud penalties on nonfinal liabilities of any amount, and approvals for qualified distributor status under the Motor Vehicle Fuel Tax Law.

Consent and adjudicatory cases are presented to the Board as separate calendar items.

Credits, Cancellations, and Refund Matters

At each Board meeting where business taxes matters are considered, matters involving credits, cancellations, and refunds may be presented to the Board Members for their consideration and approval without a hearing. Items included on this calendar are credits, cancellations, refunds, relief of penalties or interest of any type on final liabilities, and relief of final liabilities due to reasonable reliance on written advice from the Board³¹ where the total dollar amount of the relief (including tax, interest, and penalty) exceeds \$50,000. The calendar may also include relief of final liabilities due to reasonable reliance on written advice from the Board³² for any amounts of \$50,000 or less not approved through delegation to the department, and relief of fraud penalties on final liabilities of any amount. *Exception:* "See Vehicle, Vessel, and Aircraft Cancellations," on page 4-9.

Consent and adjudicatory cases are presented to the Board as separate agenda items on the Board hearing calendar.

Board Orders

Scope of Board's Authority

The Board may grant or deny all or part of a petition for redetermination or claim for refund, but may increase a deficiency determination only if a claim for an increase is made at or before the hearing.

In granting all or part of a petition, the Board must make a finding that the amount canceled was wrongly determined or exceeded the amount legally due from the person against whom the determination was made.

In granting claims for refund, the Board must find that an amount of tax, interest, or penalty was overpaid and must also identify the person who made the payment or from whom the amount was collected.

The Board may not consider a petition for redetermination or claim for refund based on grounds that the Department of Toxic Substances Control has improperly or wrongly determined that a substance is a hazardous or extremely hazardous waste.³³

Submitted for Decision

At the conclusion of a hearing, the Board may take a claim or petition under consideration. This means that the Board will issue its decision later. The Board may also choose to direct the staff to consider additional evidence or information presented by the petitioner or claimant, examine records made available by the petitioner or claimant, and if necessary, perform a reaudit.

In addition, the Board may direct the petitioner, claimant or staff to prepare and submit evidence or points and authorities in support of their contentions, and may direct the Appeals Division to provide a recommendation to the Board. When this is done, a definite time limit is set for submissions.

Redeterminations

The Board may order that the tax be redetermined without adjustment or that the measure of tax or penalty (amount on which the tax or penalty is based) be adjusted. If the measure of tax is to be adjusted, this normally will require computation of an amount of tax and interest. If a reaudit has already been performed, the tax may be redetermined consistent with staff recommendations.

Claims for Refund

After a hearing, the Board may act on a claim for refund by denying the claim, granting all of the claim, or granting part of the claim. The official notice of Board action sent to the taxpayer advises the claimant of the Board's action on the claim.

Vehicle, Vessel, and Aircraft Cancellations

Approvals of final and nonfinal liability cancellations of more than \$50,000 involving vehicles, vessels and aircraft have been delegated by the Members of the Board to the department. A public record of amounts of more than \$50,000 is available in Board Proceedings Division at least ten calendar days before the approval date.

Relief of Tax, Interest, and Penalty

Reasonable Reliance on Written Advice

The Board has the statutory authority, under the Sales and Use Tax Law, to relieve a person of tax, penalty, and interest if the person failed to file a timely return or make a timely payment due to the person's reasonable reliance on written advice provided by the Board in response to that person's written request for advice.³⁴

The Board must find that all of the following conditions are satisfied in order to grant the relief:

- The person requested in writing that the Board advise him or her whether a particular activity or transaction is subject to tax;
- The Board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax;
- The liability for taxes applied to a particular activity or transaction before the Board rescinded or modified the advice given or a change in statutory or constitutional law.

The advice is specific to the taxpayer—only the person making the written request is entitled to rely on the Board's written advice for purposes of requesting relief. Similar provisions are found in other tax and fee laws administered by the Board.³⁵

Disasters

The Board has statutory authority to relieve a person of interest due if the person's failure to file a timely return or make a timely payment was due to a disaster and occurred despite the exercise of ordinary care and the absence of willful neglect.

The person seeking relief must file a statement with the Board made under penalty of perjury that states the facts on which the claim for relief is based.³⁶

Unreasonable Delay by Board or Department of Motor Vehicles Employee

The Board may relieve a person of all or part of the interest due on a tax liability that arose during taxable periods commencing on or after July 1, 1999, if the failure to pay tax was due in whole or in part to an unreasonable error or delay by a Board employee acting in his or her official capacity. The Board may also relieve interest where the failure to pay use tax on the purchase price of a vehicle or vessel was the direct result of an error by the Department of Motor Vehicles in calculating the tax. Interest will not be relieved if a significant aspect of the error or delay was caused by an act or omission of the taxpayer or feepayer.³⁷

Penalties

Tax and fee laws provide the Board with discretionary authority to relieve various penalties, including the penalties imposed for failure to file and failure to pay on time.³⁸ Relief requests for penalties in excess of \$50,000 are presented to the Board as a part of the nonappearance calendar, under matters titled "Relief of Penalty" or "Credits, Cancellations and Refunds" depending on whether the penalty relates to a final or non-

final liability. However, all penalties are included in cases presented for hearing before the Board. Examples of motions to relieve or deny these penalties are included under “Forms of Motion” in section 3, on page 3-4.

Submitted for Decision

At the conclusion of an oral hearing, the Board may decide the matter or take the matter under submission with or without allowing the filing of additional briefs. At the end of the meeting day, the Board may decide the matter and the Appeals Division will notify the parties of the Board’s decision by letter. If the Board does not decide the matter at the end of the meeting day, the Appeals Division will prepare a proposed opinion or decision for the Board’s consideration on a nonappearance calendar at a later Board Meeting.

Petition for Rehearing

General

The various business taxes laws administered by the Board make no specific provision for rehearings of Board action. However, the business tax laws set a time at which the Board’s action becomes final and also provides for cancellation of erroneous or illegal assessments and for granting refunds of tax erroneously or illegally paid. Therefore, the Board has authority to rehear its action on petitions for redetermination and claims for refund provided the petition for rehearing is filed before the Board’s action is made final by statute. The Board, at its discretion, may grant a rehearing on a petition for redetermination or claim for refund.³⁹

Time Limitations

The Board’s decision on a petition for redetermination becomes final 30 days after the Board mails its official notice of Board action to the taxpayer or feepayer (*Notice of Redetermination*) unless a petition for rehearing is filed within that period.⁴⁰ If the taxpayer or feepayer files a timely petition for rehearing, the matter will be presented to the Board for consideration. A new *Notice of Redetermination* will be issued upon the Board’s denial of the petition for rehearing or if the Board grants a rehearing, when the Board renders its decision on the rehearing. The new *Notice of Redetermination* will become final 30 days after it is mailed.

The Board’s action on a claim for refund becomes final 90 days after the notice is mailed. If before that time the claimant files an action in court for recovery of the tax, jurisdiction over the entire subject matter moves to the superior court in which the action is filed and the Board no longer has jurisdiction.

Rescission of Board Action

The Board may, on its own motion, rescind any decision made on a petition for redetermination and again decide the issue, provided the rescission takes place before the notice to the taxpayer or feepayer becomes final: 30 days after the mailing of the *Notice of Determination* or *Official Notice of Board Action*. The motion to rescind a prior Board decision must be made by a Member who voted with the majority.

Rate Setting

The Board approves the following tax and fee rates within the time required by statute: hazardous substances tax fees (including activity fees, environmental fees, facility fees, generator fees, disposal fees, permit-by-rule fees, and conditional authorization fees); precollection rate of sales tax on motor vehicle fuel (gasoline); aircraft jet fuel and diesel fuel; tobacco products tax; diesel fuel tax rate for interstate users; emergency telephone users surcharge; and the occupational lead poisoning prevention fee.

Notes

- ¹ A “Tax Program” is defined as any revenue collecting or advisory activity the BOE is obligated to perform by provision of law or by contract.
- ² References to statutes in the text throughout this section primarily refer to the Sales and Use Tax Law. Most of the other tax and fee programs have similar provisions.
- ³ Revenue and Taxation Code section 6561.
- ⁴ Revenue and Taxation Code section 6561.5.
- ⁵ Revenue and Taxation Code section 6814.
- ⁶ Revenue and Taxation Code section 30436.
- ⁷ Revenue and Taxation Code section 30438.
- ⁸ Revenue and Taxation Code section 30439.
- ⁹ Revenue and Taxation Code section 6536.
- ¹⁰ Revenue and Taxation Code section 6538.
- ¹¹ Revenue and Taxation Code section 6537.
- ¹² Revenue and Taxation Code section 6538.5.
- ¹³ Revenue and Taxation Code section 7202.
- ¹⁴ Revenue and Taxation Code section 7204.3.
- ¹⁵ Revenue and Taxation Code section 6904.
- ¹⁶ Revenue and Taxation Code section 7093.5.
- ¹⁷ Policy per memorandum dated May 21, 2001.
- ¹⁸ Revenue and Taxation Code section 7093.5, subdivision (d).
- ¹⁹ Revenue and Taxation Code section 7093.5, subdivision (e).
- ²⁰ 11 U.S.C. section 362(b)(9).
- ²¹ California Code of Regulations, title 18, section 5023, subdivision (a).
- ²² California Code of Regulations, title 18, section 5023, subdivision (e).
- ²³ California Code of Regulations, title 18, section 5023, subdivision (f).
- ²⁴ California Code of Regulations, title 18, section 5073.
- ²⁵ California Code of Regulations, title 18, section 5076, subdivision (a).
- ²⁶ California Code of Regulations, title 18, section 5076, subdivision (e).
- ²⁷ California Code of Regulations, title 18, section 5076, subdivision (c).
- ²⁸ California Code of Regulations, title 18, section 5075.
- ²⁹ Revenue and Taxation Code section 6596.
- ³⁰ Revenue and Taxation Code section 6596.
- ³¹ Revenue and Taxation Code section 6596.
- ³² Revenue and Taxation Code section 6596.
- ³³ Revenue and Taxation Code sections 43301 and 43452.
- ³⁴ Revenue and Taxation Code section 6596.
- ³⁵ Revenue and Taxation Code sections 7657.1 (Motor Vehicle Fuel License Tax Law), 32257 (Alcoholic Beverage Tax Law), and 55045 (Fee Collection Procedures Law).
- ³⁶ Revenue and Taxation Code section 6593.
- ³⁷ Revenue and Taxation Code section 6593.5.
- ³⁸ California Code of Regulations section 6592.
- ³⁹ California Code of Regulations, title 18, section 5082.
- ⁴⁰ Revenue and Taxation Code section 6933.

5. CORPORATE FRANCHISE AND PERSONAL INCOME TAXES

Corporate Franchise and Personal Income Tax Appeals

Scope of Board's Authority

The Board serves as an appellate body over final actions of the Franchise Tax Board, issuing opinions and rendering decisions interpreting and defining California's income tax laws.

FTB Actions that May Be Appealed to the Board

- *Notice of Action* affirming a proposed tax assessment
- *Notice of Action* affirming a proposed carryover adjustment
- A grant or denial of a request for relief from joint tax liability
- *Notice of Action on Cancellation, Credit, or Refund*, or any notice that denies a claim for a refund of tax, penalties, or interest
- Deemed disallowance (i.e., failure to act) on a claim for refund
- *Notice of Determination Not to Abate Interest*, or any notice, that denies an abatement of paid or unpaid interest
- Deemed disallowance (i.e., failure to act) on a request for interest abatement
- Disallowance of interest on a refund
- Notice of determination on a petition for review of a finding of jeopardy

Time Limits for Filing an Appeal

Notice of Action Affirming a Proposed Tax Assessment¹

An individual or business entity to whom the Franchise Tax Board issues a *Notice of Action* affirming a proposed tax assessment has 30 days from the date the notice is mailed to file an appeal with the Board of Equalization. Appeals filed after the 30-day deadline will be rejected. Alternatively, the appeal may be filed by the date shown on the *Notice of Action* as the last date for filing an appeal. If the appeal is rejected due to late filing, Board Proceedings staff will inform the taxpayer of the right to pay the assessment in full and then file a claim for refund with the Franchise Tax Board. If the Franchise Tax Board denies the claim for refund, or if a response is not received from the Franchise Tax Board within six months, the taxpayer may file a timely appeal with the Board (see "Deemed Disallowance," on next page).

Notice of Action Affirming a Proposed Carryover Adjustment²

An individual or business entity to whom the Franchise Tax Board issues a *Notice of Action* affirming a proposed carryover adjustment may appeal in the same manner described above in "Notice of Action Affirming a Proposed Tax Assessment."

Grant or Denial of a Request for Relief from Joint Tax Liability³

An individual to whom the Franchise Tax Board issues a notice that grants or denies a request for joint tax liability may file an appeal in the same manner described above in “Notice of Action Affirming a Proposed Tax Assessment.”

Notice of Action on Cancellation, Credit, or Refund⁴

An individual or business entity to whom the Franchise Tax Board issues a *Notice of Action on Cancellation, Credit, or Refund* has 90 days from the date the notice is mailed to file an appeal with the Board. Appeals filed after the 90-day deadline will be rejected. If the appeal is rejected due to late filing, Board Proceedings staff will inform the taxpayer of the right to file a claim in superior court against the Franchise Tax Board. They will also advise the taxpayer to contact an attorney for more information.

Letter Denying Claim for Refund⁵

An individual or business entity to whom the Franchise Tax Board issues a letter denying their claim for refund may file an appeal in the same manner as described above in “Notice of Action on Cancellation, Credit or Refund.”

Deemed Disallowance of Claim for Refund⁶

An individual or business entity that has filed a written claim for refund with the Franchise Tax Board may file an appeal with the Board if the Franchise Tax Board has not responded to the request within six months. However, if before an appeal is filed the Franchise Tax Board denies the claim in writing, the individual or business entity must file an appeal in the same manner as described above in “Notice of Action on Cancellation, Credit or Refund.”

Notice of Determination Not to Abate Interest for Unpaid Interest⁷

An individual or business entity to whom the Franchise Tax Board issues a *Notice of Determination Not to Abate Interest* for unpaid interest has 30 days from the date the notice is mailed to file an appeal with the Board. Appeals filed after the 30-day deadline will be rejected. The Board’s review will be limited to a determination of whether the Franchise Tax Board abused its discretion in refusing to abate interest.

Notice of Determination Not to Abate Interest for Paid Interest⁸

An individual or business entity to whom the Franchise Tax Board issues a *Notice of Determination Not to Abate Interest* for paid interest has 90 days from the date the notice is mailed to file an appeal with the Board. Appeals filed after the 90-day deadline will be rejected. The Board’s review will be limited to a determination of whether the Franchise Tax Board abused its discretion in refusing to abate interest.

Deemed Disallowance of a Request to Abate Interest⁹

An individual or business entity that has filed a written request for interest abatement with the Franchise Tax Board may file an appeal with the Board if the Franchise Tax Board has not responded to the request within six months. However, if before an appeal

is filed the Franchise Tax Board denies the request in writing, the individual or business entity must file an appeal within 30 days of the mailing of the notice, in the case of unpaid interest, or within 90 days of the mailing of the notice, in the case of paid interest. The Board's review will be limited to a determination of whether the Franchise Tax Board abused its discretion in refusing to abate interest.

Disallowance of Interest on a Refund¹⁰

An individual or business entity to whom the Franchise Tax Board issues a letter disallowing interest on a refund may file an appeal in the same manner as described above in "Notice of Action on Cancellation, Credit or Refund."

Notice of Determination on a Petition for Review of a Finding of Jeopardy¹¹

An individual or business entity to whom the Franchise Tax Board issues a notice of determination on a petition for review of a finding of jeopardy may file an appeal with the Board within 60 days of the date the notice was issued. Late appeals will be rejected.

General Briefing Process¹²

The briefing process for a Franchise Tax Board appeal generally proceeds as shown below.

<i>Action or Step</i>	<i>Brief Due</i>
<i>Opening brief:</i> If original appeal letter is not complete, taxpayer is asked to file a complete opening brief.	Within 90 days of the Board Proceedings Division letter acknowledging the appeal.
<i>Reply brief:</i> If original appeal letter is complete, Franchise Tax Board is asked to file a reply brief.	Within 90 days of the Board Proceedings Division letter acknowledging the appeal.
<i>Taxpayer's supplemental brief:</i> After receiving FTB reply brief, Board Proceedings Division notifies both parties that the taxpayer may file a supplemental brief in response.	Within 30 days of the notification letter.
<i>Briefing process normally ends.</i> The appeal is scheduled for oral hearing or submitted for decision based on the written record.	

<i>Steps allowed at the discretion of the Board Proceedings Division</i>	
<i>FTB supplemental brief request:</i> If the taxpayer files a supplemental brief, Board Proceedings staff will notify both parties and advise the FTB it has 20 days in which to request permission to file a supplemental brief.	Within 20 days of the notification letter.
<i>FTB supplemental brief:</i> If Board Proceedings staff grants the FTB request, FTB may file a supplemental brief.	Within 30 days of the granting of the request. If the request is denied, the briefing process ends.
<i>Taxpayer's additional brief:</i> If FTB files a supplemental brief, the Board Proceedings Division notifies both parties that the taxpayer may file an additional response brief.	Within 30 days of the notification letter.
<i>Briefing process ends.</i> The appeal is scheduled for oral hearing or submitted for decision based on the written record.	30 days after the date of the notification letter in the previous step.

Innocent Spouse Briefing Process¹³

When the Board Proceedings staff acknowledges receipt of the appeal, the appealing spouse will be asked to complete their appeal by filing a complete opening brief and returning it to the Board within 90 days of the letter, unless the original appeal letter provided sufficient information. If the Board Proceedings staff determines that the appealing spouse provided sufficient information in the appeal letter, the responding spouse (the spouse who did not file the appeal) will be sent written notice of the appeal and given 90 days in which to file an appeal. The responding spouse will also be provided with a copy of the appeal letter and any supporting documentation, except for confidential taxpayer information, social security, address and telephone number. If the responding spouse does not file an appeal, that party will waive all rights to participate in the appeal proceeding before the Board.

After Board Proceedings staff receives the responding spouse's appeal brief or 90 days has passed, the staff will send a letter to all parties acknowledging the responding spouse's brief or the time expiration. At this point, the Franchise Tax Board will be directed to file a reply brief within 90 days, addressing the briefs filed by one or both spouses.

Once Board Proceeding staff receive and acknowledge the Franchise Tax Board's reply brief, the spouses participating in the Innocent Spouse appeal will be given 30 days to respond to the Franchise Tax Board's reply brief. The appeal will then follow the same guidelines as outlined in the general appeals process described in the previous section starting with the taxpayers' supplemental brief.

Additional Briefs or Evidence¹⁴

If the Board or Board staff determine that insufficient briefing or evidence has been provided, either the Board or staff may request additional briefing or evidence from the

parties. The briefs and evidence must be filed within the time period set by Board or Board staff. Upon showing extreme hardship, the Chief of Board Proceedings may grant a reasonable extension of time for the filing of briefs.

Extensions of Time

At any time during the briefing process, either party may file a request for extension to file a brief. The request must be in writing and clearly state the reason for the request. The request must be filed before the briefing deadline. The Chief of Board Proceedings may grant the extension request if a party shows extreme hardship or if both parties agree in writing. Generally, the Chief of Board Proceedings grants only one extension during the briefing process.

Deferring an Appeal

Either party may request a deferral of the appeal process for sufficient cause or if both parties agree. However, when circumstances warrant, Board Proceedings may grant a deferral request by only one party. Generally, deferrals are granted in the following instances:

- The parties are negotiating for the purposes of reaching a settlement agreement.
- A case with similar issues that will affect the outcome of a decision in the appeal is pending before state court, federal court, the Board, or the Internal Revenue Service.
- The taxpayer files for bankruptcy.

Settlement

At any time during the appeals process, the taxpayer may file a written request for settlement with the Franchise Tax Board. Once the Franchise Tax Board accepts the appeal into its settlement program it will notify Board Proceedings staff in writing. Board Proceedings staff then will notify all parties, in writing, that appeal proceedings in the matter are being deferred pending the outcome of settlement negotiations.

Bankruptcy

If the taxpayer files for bankruptcy at any time during the appeals process, the taxpayer must notify Board Proceedings staff immediately. The taxpayer should write a letter stating that the taxpayer has filed for bankruptcy and provide supporting documents. When Board Proceedings receives sufficient information, division staff will send a letter to both parties indicating that the appeal proceedings are deferred until the bankruptcy is resolved.

Board Hearing

The Board hearing is an oral presentation before the Board that allows the taxpayer to present his position on unresolved tax issues. The taxpayer may represent himself or herself at the oral hearing or choose an attorney, an accountant, or any other person over the age of 18 as a representative.

Acknowledgment Letter

After receiving the taxpayer's hearing request, the Board Proceedings Division will send the taxpayer an acknowledgment letter. The letter will include the date and location of the oral hearing and provide the taxpayer with contact information for a person in the Board Proceedings Division. The taxpayer will also be provided information on the conduct of the hearing, postponements, interest and penalties, and the Taxpayers' Rights Advocate.

Notice of Hearing

Approximately 60 days before the hearing date, Board Proceedings will mail the taxpayer a Board hearing packet. The packet includes a notice of hearing, a hearing notice response form,¹⁵ and detailed information on the Board hearing, conduct of the Board, exhibits, postponement, settlement and Taxpayers' Rights Advocate. Directions to the hearing location are also provided in the hearing packet.

If the taxpayer does not respond to the notice, the hearing will be removed from the oral hearing calendar and placed on the nonappearance matters calendar. The Board will then make its decision based on the written record.¹⁶

Postponement of Board Hearing

Before the hearing notice response deadline, the Chief of Board Proceedings may grant the taxpayer one postponement if the parties agree and sufficient justification is provided. After the response deadline has passed, a postponement can only be granted if the parties agree and the requesting party demonstrates extreme hardship. In addition, the Board may, at its discretion, grant postponements and second postponements.¹⁷

Staff Summary

Two weeks before the hearing, the Board Proceedings Division will send the taxpayer a copy of the hearing summary prepared by the Appeals Division, which states the unresolved tax issues for the Board Members' decision.

Conduct of the Board

More detailed information regarding the Board meeting is provided in the "Board Meetings" section of this reference. It includes general information, and information on voting, committees, planning Board meetings, and the roles and responsibilities of staff at a Board hearing.

Submitted for Decision

At the conclusion of the hearing, the Board may decide the matter or take the matter under submission with or without allowing the filing of additional briefs. At the conclusion of the meeting day, the Board may decide the matter and the Appeals Division will notify the parties of the Board's decision by letter. If the Board does not decide the matter at the end of the meeting day, the Appeals Division will prepare a proposed opinion or decision for the Board's consideration on a nonappearance calendar at a later Board meeting.

Nonappearance Matters

Matters for Action

The Board Meeting agendas include an agenda item for nonappearance matters for all tax programs entitled “Tax Program Non-Appeal Matter.” Cases brought before the Board by the Appeals Division appear on the agenda as “Legal Appeals Matters (Consent and Adjudicatory).” This item, commonly referred to as the “Final Action Calendar,” typically includes four kinds of matters: Opinions, Decisions, Petitions for Rehearing, and Opinions on Petition for Rehearing.

The Board Proceedings Division is responsible for preparing the Final Action Calendars and assembling materials for them.

Formal Opinions

Formal Opinions are precedential Board decisions that a taxpayer or legal staff may refer to in presenting legal arguments before the Board.

The Appeals Division staff generally writes formal opinions for Board approval at the Board’s direction when an appeal

- Involves an interpretation of a new or existing law.
- Applies an existing rule to a set of facts significantly different from those found in previously published formal opinions.
- Modifies an existing rule or interpretation.
- Resolves or reconciles an area of confusion or apparent conflict.
- Involves an issue of continuing or special public interest.

Once the formal opinion is drafted, the matter will be placed on a nonappearance adjudicatory calendar for consideration.

Upon Board approval, Board Proceedings staff mails the taxpayer and the Franchise Tax Board copies of the Board’s Opinion. A Formal Opinion will become final 30 days after the Board action unless the taxpayer or Franchise Tax Board files a petition for rehearing.¹⁸

Summary Decisions

Summary Decisions are recommendations that the Appeals Division staff prepare and present to the Board Members for adoption based upon written filings in the appeal file. They reflect the Board’s action in routine and repetitive matters. Summary Decisions are not considered precedent and should not be referenced in legal arguments presented before the Board.¹⁹

Upon Board approval, Board Proceedings staff mails the taxpayer and the Franchise Tax Board copies of the Board’s Decision. A Summary Decision will become final 30 days after Board action unless the taxpayer or Franchise Tax Board files a petition for rehearing.²⁰

Petitions for Rehearing

The taxpayer, the Franchise Tax Board, or both may file a petition for rehearing if they disagree with the Board's decision. The petition for rehearing must be filed within 30 days of the date of the Board's decision.²¹

The Board Proceedings staff will acknowledge the petition for rehearing and provide the opposing party 30 days in which to respond to the argument presented in the petition.

Upon receipt of the response to the petition for rehearing or after 30 days have passed, the Board Proceedings staff will inform all parties that the briefing has concluded and the Appeals Division staff will be given 30 days in which to prepare a recommendation for Board approval based upon the written filings. Once the recommendation is complete, the matter is placed on a nonappearance calendar for Board approval.

Immediately following the Board's decision, Board Proceedings Division staff will mail both the taxpayer and the Franchise Tax Board a copy of the Board's decision on the petition for rehearing. If the Board denies the petition for rehearing, the Board's original action becomes final on the denial date.

However, if the Board grants the petition for rehearing, the taxpayer and the Franchise Tax Board will be given a new hearing date in which to return before the Board and present arguments based upon the information in the petition. At the conclusion of oral arguments, the Board will make its decision on the petition. Board Proceedings staff will mail both the taxpayer and the Franchise Tax Board a copy of the Board's decision, which will become final 30 days after the rehearing date²².

Once an action on an appeal from the Franchise Tax Board is final, the Board has no authority to rescind it.

Dismissal of Appeals

At any time during the appeals process, the taxpayer may file a written request with Board Proceedings staff indicating the taxpayer's desire to withdraw the appeal. Upon receipt of the request for dismissal, the Chief of Board Proceedings will dismiss the appeal.

An appeal may also be dismissed if both the taxpayer and the Franchise Tax Board reach a resolution in the pending appeal. The taxpayer and Franchise Tax Board must sign a written stipulation indicating the matter has been resolved to each party's satisfaction. Upon receipt of the written stipulation, the Chief of Board Proceedings will dismiss the appeal consistent with the terms of the resolution.

Once a taxpayer withdraws an appeal, the Board may not have jurisdiction on appeal matters for the tax years and issues that were a part of the dismissed appeal.

Notes

- ¹ Revenue and Taxation Code sections 19045 and 19046.
- ² Revenue and Taxation Code sections 19043.5, 19045 and 19046.
- ³ Revenue and Taxation Code sections 19045 and 19046.
- ⁴ Revenue and Taxation Code sections 19324 and 19332.
- ⁵ Revenue and Taxation Code sections 19324 and 19332.
- ⁶ Revenue and Taxation Code sections 19331 and 19332.
- ⁷ Revenue and Taxation Code section 19104, subdivision (b).
- ⁸ Revenue and Taxation Code section 19104, subdivision (b).
- ⁹ Revenue and Taxation Code section 19104, subdivision (b).
- ¹⁰ Revenue and Taxation Code sections 19343 and 19344.
- ¹¹ Revenue and Taxation Code sections 19084 and 19085.
- ¹² California Code of Regulations, title 18, sections 5075 and 5075.1.
- ¹³ California Code of Regulations, title 18, sections 5075 and 5075.1
- ¹⁴ California Code of Regulations, title 18, section 5075.1, subdivision (e).
- ¹⁵ California Code of Regulations, title 18, sections 5076, subdivision (a), and 5076.1.
- ¹⁶ California Code of Regulations, title 18, section 5076, subdivision (e).
- ¹⁷ California Code of Regulations, title 18, section 5076, subdivision (c).
- ¹⁸ Revenue and Taxation Code sections 19048, 19334, and 19346.
- ¹⁹ Appeal of Charles W. Fowlks, 88-SBE-023-A, Oct. 31, 1989.
- ²⁰ Revenue and Taxation Code sections 19048, 19334, and 19346.
- ²¹ Revenue and Taxation Code sections 19048, 19334, and 19346.
- ²² Revenue and Taxation Code sections 19048, 19334, and 19346.

6. HOMEOWNER AND PERSONAL INCOME TAX ASSISTANCE

Homeowner and Renter Property Tax Assistance

Scope of Board's Authority

The Board serves as an appellate body in final actions of the Franchise Tax Board, issuing opinions and rendering decisions interpreting and defining California's income tax laws. The Homeowner and Renter Property Tax Assistance Program is one of the programs administered by the Franchise Tax Board.

Action from which Appeals May Be Taken

Denial of Homeowner and Renter Property Tax Assistance

Time Limits for Filing an Appeal¹

A person to whom the Franchise Tax Board issues a *Denial of Homeowner and Renter Property Tax Assistance* has 90 days from the date the denial is mailed to file an appeal with the Board. Late appeals will be rejected.

General Briefing Process²

The briefing process generally proceeds as shown below.

<i>Action or Step</i>	<i>Brief Due</i>
<i>Opening brief:</i> If original appeal letter is not complete, taxpayer is asked to file a complete opening brief.	Within 90 days of the Board Proceedings Division letter acknowledging the appeal.
<i>Reply brief:</i> If original appeal letter is complete, Franchise Tax Board is asked to file a reply brief.	Within 60 days of the Board Proceedings Division letter acknowledging the appeal.
<i>Taxpayer's supplemental brief:</i> After receiving FTB reply brief, Board Proceedings Division notifies both parties that the taxpayer may file a supplemental brief in response.	Within 30 days of the notification letter.
<i>Briefing process normally ends.</i> The appeal is scheduled for oral hearing or submitted for decision based on the written record.	30 days after date of the notification letter in the previous step.

<i>Steps allowed at the discretion of the Board Proceedings Division</i>	
<i>FTB supplemental brief request:</i> If the taxpayer files a supplemental brief, Board Proceedings staff will notify both parties and advise the FTB it has 20 days in which to request permission to file a supplemental brief.	Within 20 days of the notification letter.
<i>FTB supplemental brief:</i> If Board Proceedings staff grants the FTB request, FTB may file a supplemental brief.	Within 30 days of the granting of the request. If the request is denied, the briefing process ends.
<i>Taxpayer's additional brief:</i> If FTB files a supplemental brief, the Board Proceedings Division notifies both parties that the taxpayer may file an additional response brief.	Within 30 days of the notification letter.
<i>Briefing process ends.</i> The appeal is scheduled for oral hearing or submitted for decision based on the written record.	30 days after the date of the notification letter in the previous step.

Additional Briefs or Evidence³

If the Board or Board staff determine that insufficient briefing or evidence has been provided, either the Board or staff may request additional briefing or evidence from the parties. The briefs and evidence must be filed within the time period set by Board or Board staff. Upon showing extreme hardship, the Chief of Board Proceedings may grant a reasonable extension of time for the filing of briefs.

Extensions of Time

At any time during the briefing process, either party may file a request for extension of time to file a brief. The request must be in writing and clearly state the reason for the request. The request must be filed before the briefing deadline. The Chief of Board Proceedings may grant the extension request if a party shows extreme hardship or if both parties agree in writing. Generally, the Chief of Board Proceedings grants only one extension during the briefing process.

Postponement of Board Hearing

A taxpayer may file a request for postponement with the Chief of Board Proceedings, provided there is sufficient justification and the request for a postponement is made by the specified response deadline. After the specified response deadline, the Chief of Board Proceedings may grant a postponement request upon agreement of the parties and the showing of extreme hardship.⁴

Deferring an Appeal

Either party may request a deferral of the appeal process for sufficient cause or upon agreement of both parties. However, when circumstances warrant, Board Proceedings may grant a deferral request by only one party.

Settlement

At any time during the appeals process, the taxpayer may file a written request for settlement with the Franchise Tax Board. Once the Franchise Tax Board accepts the appeal into its settlement program, it will notify Board Proceedings staff in writing. Board Proceedings staff will then notify all parties, in writing, that appeal proceedings in the matter is in deferral status pending the outcome of settlement negotiations.

Board Hearing

The Board hearing is an oral presentation before the Board that gives the taxpayer the opportunity to present his or her position on unresolved tax issues. The taxpayer may represent himself or herself at the oral hearing or choose a representative. That person can be an attorney, an accountant, or anyone else over the age of 18.

Acknowledgment Letter

After receiving the taxpayer's hearing request, the Board Proceedings Division will send the taxpayer an acknowledgment letter. The letter will include the date of the oral hearing, state the location where the hearing will be held, and provide the taxpayer with a contact person in the Board Proceedings Division. The taxpayer will also be provided information on the conduct of the hearing, postponements, interest and penalties, and the Taxpayers' Rights Advocate.

Notice of Hearing

Approximately 60 days prior to the hearing date, Board Proceedings will mail a Board hearing packet to the taxpayer. The packet includes a notice of hearing, a response to the hearing notice,⁵ and detailed information on the Board hearing, conduct of the Board, exhibits, postponement, settlement and the Taxpayers' Rights Advocate. Directions to the hearing location are also provided in the hearing packet.

Failure to respond to the notice will result in the hearing being removed from the oral hearing calendar and placed on the nonappearance matters calendar. The Board will then make its decision based on the written record.⁶

Postponement of Board Hearing

A taxpayer may file request for postponement with the Chief of Board Proceedings, provided there is sufficient justification and the request for a postponement is made by the specified response deadline. After the specified response deadline, the Chief of Board Proceedings may grant a postponement request upon agreement of the parties and the showing of extreme hardship.⁷

Staff Summary

Two weeks before the hearing, the Board Proceedings Division will send the taxpayer a copy of the hearing summary prepared by the Appeals Division, which states the unresolved tax issues for the Board Members' decision.

Conduct of Board Hearing

More detailed information regarding the Board meeting is provided in the "Board Meetings" section of this reference. It includes general information, and information on voting, committees, planning Board meetings, and the roles and responsibilities of staff at a Board hearing.

Submitted for Decision

At the conclusion of the hearing, the Board may decide the matter or take the matter under submission with or without allowing the filing of additional briefs. At the conclusion of the meeting day, the Board may decide the matter and the Appeals Division will notify the parties of the Board's decision by letter. If the Board does not decide the matter at the end of the meeting day, the Appeals Division will prepare a proposed opinion or decision for the Board's consideration on a nonappearance calendar at a later Board meeting.

Nonappearance Matters

Matters for Action

The Board Meeting agendas include an agenda item for nonappearance matters for all tax programs entitled "Tax Program Non-Appearance Matter." Cases brought before the Board by the Appeals Division appear on the agenda as "Legal Appeals Matters (Consent and Adjudicatory)." This item, commonly referred to as the "Final Action Calendar," typically includes four kinds of matters: Opinions, Decisions, Petitions for Rehearing, and Opinions on Petition for Rehearing.

The Board Proceedings Division is responsible for preparing the Final Action Calendars and assembling materials for them.

Formal Opinions

Formal opinions are precedent Board decisions that a taxpayer or legal staff may refer to in presenting legal arguments before the Board.

The Appeals Division staff generally write a formal opinion for Board Approval at the Board's direction when an appeal

- Involves an interpretation of a new or existing law.
- Applies an existing rule to a set of facts significantly different from those found in previously published Opinions.
- Modifies an existing rule or interpretation.

- Resolves or reconciles an area of confusion or apparent conflict.
- Involves an issue of continuing or special public interest.

Once the Opinion is drafted, the matter will be placed on a nonappearance adjudicatory calendar for consideration.

Upon Board approval, Board Proceedings staff mails the taxpayer and the Franchise Tax Board copies of the Board's Opinion. A Formal Opinion will become final 30 days after the Board action unless the taxpayer or Franchise Tax Board files a petition for rehearing.⁸

Summary Decisions

Summary Decisions are recommendations that the Appeals Division staff prepare and present to the Board Members for adoption based upon written filings in the appeal file. They reflect the Board's action in routine and repetitive matters. Summary Decisions are not considered precedent and should not be referenced in legal arguments presented before the Board.⁹

Upon Board approval, Board Proceedings staff mails the taxpayer and the Franchise Tax Board copies of the Board's Decision. A Summary Decision will become final 30 days after Board action unless the taxpayer or Franchise Tax Board files a petition for rehearing.¹⁰

Petitions for Rehearing

The taxpayer, the Franchise Tax Board, or both may file a petition for rehearing if they disagree with the Board's decision. The Petition for Rehearing must be filed within 30 days of the date of the Board's decision.¹¹

The Board Proceedings staff will acknowledge the petition for rehearing and provide the opposing party 30 days in which to respond to the argument presented in the petition.

Upon receipt of the response to the petition for rehearing or after 30 days have passed, the Board Proceedings staff will inform all parties that the briefing has concluded and the Appeals Division staff will be given 30 days in which to prepare a recommendation for Board approval based upon the written filings. Once the recommendation is complete, the matter is placed on a nonappearance calendar for Board approval.

Immediately following the Board's decision, Board Proceedings Division staff will mail both the taxpayer and the Franchise Tax Board a copy of the Board's decision on the petition for rehearing. If the Board denies the petition for rehearing, the Board's original action becomes final on the denial date.

However, if the Board grants the petition for rehearing, the taxpayer and the Franchise Tax Board will be given a new hearing date in which to return before the Board and present arguments based upon the information in the petition. At the conclusion of oral arguments, the Board will make its decision on the petition. Board Proceedings staff will mail both the taxpayer and the Franchise Tax Board a copy of the Board's decision, which will become final 30 days after the rehearing date.¹²

Once an action on an appeal from the Franchise Tax Board is final, the Board has no authority to rescind it.

Dismissal of Appeals

At any time during the appeals process, the taxpayer may file a written request with Board Proceedings staff indicating the taxpayer's desire to withdraw the appeal. Upon receipt of the request for dismissal, the Chief of Board Proceedings will dismiss the appeal.

An appeal may also be dismissed if both the taxpayer and the Franchise Tax Board reach a resolution in the pending appeal. The taxpayer and the Franchise Tax Board must sign a written stipulation indicating the matter has been resolved to each party's satisfaction. Upon receipt of the written stipulation, the Chief of Board Proceedings will dismiss the appeal consistent with the terms of the resolution.

Once a taxpayer withdraws an appeal, the Board may not have jurisdiction on appeal matters for the tax years and issues that were a part of the dismissed appeal.

Notes

- ¹ Revenue and Taxation Code sections 19324 and 20642.
- ² California Code of Regulations, title 18, sections 5075 and 5075.1.
- ³ California Code of Regulations, title 18, section 5075.1, subdivision (e).
- ⁴ California Code of Regulations, title 18, section 5076, subdivision (c).
- ⁵ California Code of Regulations, title 18, section 5076, subdivision (a) and 5076.1.
- ⁶ California Code of Regulations, title 18, section 5076, subdivision (e).
- ⁷ California Code of Regulations, title 18, section 5076, subdivision (c).
- ⁸ Revenue and Taxation Code section 19334.
- ⁹ Appeal of Charles W. Fowlks, 88-SBE-023-A, Oct. 31, 1989.
- ¹⁰ Revenue and Taxation Code section 19334.
- ¹¹ Revenue and Taxation Code section 19334.
- ¹² Revenue and Taxation Code section 19334.

7. PROPERTY TAXES

Property Taxes

State Assessee¹ Valuation Procedures

Annual Valuation Calendar

Each year the Board Proceedings Division, after consulting with the Property and Special Taxes Department, prepares a calendar for the valuation of the property owned by state assesseees. The calendar sets forth deadlines and other important dates affecting state-assessed properties. After the Board adopts the calendar, the Board Proceedings Division mails copies to state assesseees, county assessors, county supervisors, and Board staff. The Valuation Division publishes the calendar on the Property Taxes section of the Board website.

Value Setting

The Valuation Division annually develops fair market value indicators, along with recommended unitary values as of the January 1 lien date, for property owned by state assesseees. It then submits the values to the Board. State assesseees may present information related to their values at the February and April/May Board meetings. The Board considers the staff recommendations and the information provided by state assesseees and sets unitary values by May 31.² Once the values of state-assessed unitary properties have been set by the Board, state assesseees are notified of their respective Board-adopted values and of their appeal rights.

The Valuation Division annually allocates the Board-adopted unitary value for each state assessee's properties among the counties where the property is located. By June 15, state assesseees are notified of the proposed allocated assessed values of their unitary properties and of their appeal rights if they disagree with the allocation.³

Staff submits the recommended allocated unitary assessed values and recommendations for all state-assessed nonunitary property to the Board for adoption of the state-assessed property roll. The Board adopts and transmits the allocated unitary values and nonunitary property values to the county auditors by July 31.⁴ Once the allocated unitary values and the values of nonunitary state-assessed properties have been adopted by the Board,⁵ state assesseees are notified of their respective nonunitary values and of their appeal rights.

Appeals Process

Petition for Reassessment or Penalty Abatement

State assesses must file petitions for reassessment or penalty abatement with the Board at its Sacramento Headquarters. The deadlines and extension information are as follows:

- For *unitary* property reassessment or penalty abatement, the petition deadline is July 20 of the year of value notice. The Board may extend this deadline to August 4.⁶
- For *nonunitary* property reassessment or penalty abatement, the petition deadline is September 20 of the year of the value notice. The Board may extend this deadline to October 5.⁷

A petition for reassessment must be in writing and state the name of the property owner/petitioner, the petitioner's opinion of the property's value, the precise elements of the Board's valuation that is being contested, and the facts relied upon to support the requested change on value. The petitioner's appraisal reports, financial studies, and other materials relevant to value must be provided with the petition. If supporting documents are not submitted, the petition is considered incomplete.⁸

A petition for penalty abatement must state facts establishing that the petitioner had a reasonable cause for failing to file a timely property statement and showing that the delay occurred despite the petitioner's exercise of ordinary care and absence of willful neglect.

The petition may serve as a claim for refund of tax to be paid on the assessment that is the subject of the petition if it includes a statement to that effect.

Unless the petitioner requests an oral hearing in the petition for reassessment or penalty abatement, the matter will be submitted for decision without an oral hearing on the basis of the written petition. The hearings are held in Sacramento unless the Board directs otherwise.⁹

For all petitions requesting an oral hearing or an appeals conference at the time the petition is filed, a conference will be conducted by the Legal Department Appeals Division no less than 30 days prior to the Board meeting date for which the petition is scheduled. The Board Proceedings Division will notify the petitioner, the Valuation Division, and the Tax and Fee Programs Division of the date, time and place of the Appeals Conference by mail, electronic mail or facsimile. The petition shall constitute the petitioner's opening brief. The Valuation Division will prepare and submit the "Valuation Division Analysis" to the Board Proceedings Division, which will transmit a copy to the petitioner, no less than 30 days prior to the scheduled date of the Appeals Conference. The petitioner may file an optional response within 15 days after the Board Proceedings Division mails the Valuation Division Summary to the petitioner. The Appeals Division may also request additional information or briefing from the parties before, during, or after the Appeals Conference.

The conference holder will prepare a Hearing Summary for each Appeals Conference held for a petition that has requested an oral hearing. The Hearing Summary will objectively summarize the Appeals Conference proceedings, state the issues presented,

including those that have been narrowed and resolved, and establish a factual record either through stipulation or independent recommendations of findings based on the evidence. The Hearing Summary will also present a neutral analysis of the legal and valuation issues and provide the Appeals Division's comments to assist the Board at the oral hearing. The Hearing Summary will be submitted to the Board Proceedings Division no less than 10 days before the oral hearing and the Board Proceedings Division will distribute copies to the Board Members and the parties.

The Appeals Division will not review petitions when the petitioners have waived an oral Board hearing and the petitioner and the Valuation Division agree regarding the resolution of all issues. For these petitions, the Legal Department's Tax and Fee Programs Division will draft the Valuation Division's *Recommendation on Property Tax Petition* and staff will place it on the Property Tax Matters Nonappearance Calendar for consideration and adoption by the Board.

Petition for Correction of Allocated Assessment

The Board must mail a notice showing the allocated assessed values of unitary properties to state assessees no later than June 15 each year. The notice includes a time and place for filing a petition for correction of the allocated assessment. Assessee must file petitions with the Board at its Sacramento Headquarters no later than July 20 of the year of the notice.¹⁰ The petition must be in writing and state the petitioner's name and the specific grounds for the claim of correction or adjustment. It may not raise as an issue the value of the total unitary property.¹¹ Board staff must mail written notice of the time and place set for the hearing to the assessee at least ten working days before the hearing date.¹²

Conduct of Board Hearing—State Assessee

The procedures for the conduct of a Board hearing on State Assessee Valuation is provided in the "Board Meetings" section of this reference. The section includes general information, and information on voting, committees, planning Board meetings, and the roles and responsibilities of staff at a Board hearing.

Decision

Upon conclusion of a hearing, the Board may decide the matter then or later in the same meeting, take the matter under submission for decision at another meeting, or take the matter under submission and allow the petitioner and the staff time to submit further information. However, since the Board must render its decision on a property tax petition no later than December 31 in the year of the value notice, decisions cannot be made after the December Board meeting. A written notice of decision is mailed to the petitioner. If the petitioner requests written findings and decision in the petition or at any time before the hearing begins, those will also be mailed to the petitioner.¹³ The decision of the Board is final and the Board will not reconsider or rehear a petition.¹⁴

Audits and Escaped Assessments

Audits

The Valuation Division audits the records of state assessees to determine whether the assessees have accurately reported data regarding their properties on their property statements. Staff then prepares an audit report. At any time after an audit begins, an assessee may disagree with a particular conclusion reached by the Board staff. To resolve the dispute, the assessee may either state its objections in writing or request a meeting with the auditor and the auditor's supervisor. When the audit report is completed, a 30-day notice letter is mailed so that the assessee may provide any additional data that might alter the audit findings. After review of the additional information, the audit findings are presented to the Board for consideration. If the Board adopts an escaped or excessive assessment, a notice will be sent to the assessee along with details and an explanation of the assessee's appeal rights.

Appeals Process and Board Hearings

State assessees must be given at least 50 days from the mailing date of the value notice to file a petition for reassessment or penalty abatement for escaped assessments made outside the regular assessment period.¹⁵

The appeals process and the procedures for the conduct of the Board hearing for escaped assessments are the same as those for regular assessments, except that the December 31 deadline for the Board decision does not apply.

Private Railroad Cars¹⁶ Valuation Procedures

Annual Valuation Calendar

Each year, after consulting with the Property and Special Taxes Department, the Board Proceedings Division prepares a calendar for the assessment of private railroad cars. The calendar shows deadlines and other important dates affecting the assessment, levy, and collection of the private railroad car tax. After the Board adopts the calendar, copies are mailed to private railroad car owners and Board staff.

Value Setting

On or before August 1, the Valuation Division prepares a recommendation establishing the value of private railroad cars as of the January 1 lien date¹⁷ and submits that recommendation to the Board for its annual adoption of the private railroad car roll. Once the Board has set the values of private railroad cars, all private railroad car companies are notified of their respective values and appeal rights.

Appeals Process

Petition for Reassessment and/or Penalty Abatement

Private railroad car companies must file petitions for reassessment or penalty abatement no later than September 20. If the company makes a written request by September 20, the

Board may extend the filing deadline to October 5.¹⁸ For an assessment made outside the regular assessment period, the petition for reassessment must be filed by the 50th day following the date of the notice of the assessment.¹⁹ If the petition for reassessment is not filed on time, the assessment becomes final.

A petition for reassessment must be in writing and state the petitioner's name, the petitioner's opinion of the value of the property, and the precise elements of the Board's valuation that is being contested. A petition for penalty abatement must set forth facts establishing that the failure to file a property statement on time was due to reasonable cause and occurred despite the exercise of ordinary care and the absence of willful neglect.

Assesseees may request an oral hearing in the petition for reassessment or penalty abatement. Unless the Board directs otherwise, the hearings are held in Sacramento.²⁰ For assessments made within the regular period, the hearing must be held before January 31.²¹ For assessments made outside the regular period, the hearing must be held within 90 days of the date on which the petition was filed.²² The Board's decision is due within 45 days after the hearing.²³

A petitioner may choose to have an appeal decided by the Board as a "written-only" petition. Or the petitioner may initially request an oral hearing and later waive the oral hearing before the publication of the Board's *Public Agenda Notice*. These petitions are scheduled for the Board's *Property Taxes Nonappearance Matters* calendar.

Claims for Refund

Assesseees who wish to claim a credit for refund must file a written claim no later than

- Four years from December 10 of the year in which the assessment is made, or
- Six months from the date of overpayment,

whichever occurs later.²⁴ The Board will not approve late claims.

Each claim must be in writing and state the specific grounds on which it is based.²⁵ The private railroad car company may request an oral hearing or a decision on the basis of the written petition. Claims are acknowledged by the Board Proceedings Division. If additional documentation is needed, the Board Proceedings Division notifies the claimant, describes the information needed, and provides a deadline for submitting it.

There is no statutory right to a hearing on a claim for refund. However, it is Board policy to grant those hearings when requested if the claimant has not had a hearing on a petition for reassessment or if the claim for refund is based on different grounds than the petition for reassessment. Unless the Board directs otherwise, the hearings are held in Sacramento.²⁶

Conduct of Board Hearing

The Board is required to hear the petition by January 31 for any petitions for reassessment made within the regular assessment period. Otherwise, the procedures for the conduct of Board hearings for petitions for reassessment of the private railroad car tax

are the same as procedures for Board hearings²⁷ for petitions for reassessment of state-assessed property, discussed on page 7-3.

Audits and Escaped Assessments

Audits

The Valuation Division may periodically audit the records of private railroad car companies to determine whether car costs have been accurately reported and to prepare an audit report. At any time after an audit begins, a private railroad car company may disagree with a particular conclusion reached by the auditor. In order to resolve the dispute, the company may either state its objections in writing or request a meeting with the auditor and the auditor's supervisor. When the audit report is prepared, a notice accompanying the report gives the private railroad car company 30 days in which to submit any additional data that might alter the audit findings. If after further review of all submitted evidence, the audit findings indicate that the property has been underassessed or overassessed, staff will present recommendations reflecting escaped assessments or excessive assessments to the Board. If the Board adopts an escaped assessment or assessment reduction, staff will send a notice to the company along with an explanation of the company's appeal rights.

Appeals Procedure

The appeal and hearing procedure for disputing an escaped assessment are the same as those for assessments made during the regular assessment period. However, the January 31 deadline for the Board decision does not apply.

Property of Local Government Located Outside its Boundaries²⁸

Assessment and Review

Functions of the Board

Land and improvements owned by a local government that are located outside its boundaries are assessed by the county in which the land and improvements are located, to the extent permitted by section 11 of article XIII of the California Constitution. These assessments are subject to review, equalization, and adjustment by the Board.²⁹

Process Before Board Hearing

The county assessor of the county in which the property is located will assess the property. If the local government that owns the property disagrees with the county assessor's assessment, it may seek review of the assessment.

Appeals Process

Application for Assessment Review

An application for assessment review must be in writing and authorized by the local government making the application. The application must

- Show facts to support the claim and include a separate statement of points and authorities,³⁰ and
- Be filed by the third Monday in July of the year in which the assessment is made, or within two weeks after the completion and delivery by the assessor of the local roll containing the assessment, whichever is later. But if the assessment was made outside the regular period for assessments, the application must be filed within 60 days from the date the county mails the tax bill to the assessee.³¹

The county assessor must file a written answer to the application and a statement of points and authorities.³² However, failure to file an answer does not constitute a default or admission of any matters in the application.

Prehearing Conference

An attorney from the Appeals Division will conduct a prehearing conference for each application. The primary purpose of the conference is to clarify, develop, and narrow the issues. After the conference, the attorney will prepare a statement of the issues and summary of the resolved matters, which is placed in the record when the hearing begins.³³

Conduct of Board Hearing

The procedures for the conduct of Board hearings for these appeals are the same as the procedures for Board hearings on a petition for reassessment of state-assessed property, discussed on page 7-3. Hearings are ordinarily conducted in Sacramento.³⁴

Action After Board Decision

After the Board decision, the Executive Director transmits to the applicant, the county assessor, the governing body of the taxing agency, and the county auditor a notice of the Board's action on the application. Upon receipt of the notice, the county auditor enters any resulting change in the assessment on the local roll.³⁵

Welfare and Veterans' Organization Exemption Claims³⁶

Administration of the Exemption

Joint Administration

The welfare exemption is for property owned by qualifying nonprofit, tax-exempt organizations and used exclusively for religious, hospital, charitable, or scientific purposes. These property tax exemptions are administered jointly by the Board and county assessor.³⁷ The Board determines whether an organization is eligible for the

welfare or veterans' organization exemption, and the county assessor determines whether the organization's property is eligible for the exemption based on its use.

Functions of Board Staff

Nonprofit, tax-exempt organizations file claim forms with the Board for an Organizational Clearance Certificate for Welfare or Veterans' Organization Exemption and Supplemental Clearance Certificate for limited partnership, low-income housing property – welfare exemption. The exemption staff of the Board's Property and Special Taxes Department review the claim forms for completeness and determine whether the organization is eligible for the exemption.

If eligible, the staff issues an organizational clearance certificate or a supplemental clearance certificate, or both, if appropriate. The claimant then files a copy of the certificate with an exemption claim form with the assessor of the county in which the property is located to demonstrate that the organization qualifies for the exemption and its property may be granted the exemption if the assessor determines the property is used for a qualifying purpose.

If the exemption staff determine that an organization does not qualify for exemption, they will issue a "not been met" finding sheet and a *Preliminary Notice*. The organization has 30 days from the date of the notice to submit supplementary material supporting the claim or to request a 30-day extension to provide additional information. Upon receipt of the supplemental material, the exemption staff will conduct a complete review of the claim and determine if the exemption requirements are met.

The staff will send a notice to the organization regarding whether the supplemental material provides a basis for amending the staff's original finding. If the staff's finding is that the organization remains ineligible for exemption, a second finding sheet with a *Final Notice* will be issued to notify the claimant that it has 60 days from the date of the notice to petition the Board for a hearing on the denied claim.

The Appeals Process

Petitions for Board Hearing

A petition for a Board hearing on a denied claim must be in writing and state all of the grounds upon which qualification is claimed.³⁸ The Board Proceedings Division sends a letter acknowledging receipt of the petition. The claimant may request an oral hearing or a decision based on the written petition.

When an organization requests an oral hearing, the Board Proceedings Division provides 60 days' notice of the date and time of the hearing. Unless the Board directs otherwise, the hearings are held in Sacramento.³⁹

Conduct of the Board Hearing

The procedures for the conduct of Board hearings for the staff denial of an organizational clearance certificate for welfare or veterans organization are procedures for Board hearings on a petition for reassessment of state-assessed property, discussed on page 7-3.

However, the Legal Department's Tax and Fee Programs Division will draft a brief for the Assessment Policy and Standard Division rather than the Valuation Division.⁴⁰

Timber Yield Tax⁴¹ Harvest Values and Audits

Adoption of Harvest Values

On or before June 30 and December 31 each year, Board staff, in consultation with the Timber Advisory Committee, recommends a schedule of immediate timber harvest values to the Board for adoption. The schedule lists preliminary immediate harvest values by timber species or subclassification. Following a public hearing, at which the Board considers any additional information provided by staff or the public, the Board will adopt immediate harvest values for the next six-month harvest period.

Audits and Determinations

Each calendar quarter, timber owners file a Board return indicating the timber harvested during the preceding quarter.⁴² Auditors in the Timber Tax Section of the County Property Tax Division periodically audit the returns and records of timber owners to determine whether the timber harvest has been accurately reported. A discussion with the auditor allows the timber owner to present additional information that may resolve a disputed item. After a thorough discussion with the auditor, the taxpayer will be mailed a copy of the preliminary audit report. After reviewing the report, the taxpayer is given another opportunity to discuss the audit findings.

If the auditors find that the taxpayer did not report or pay the full amount of tax due, the Board will determine the amount of the deficiency and send the taxpayer a *Notice of Determination*.⁴³ Taxpayers may appeal the deficiency determination to the Board.

Conduct of Board Hearing

The procedures for the conduct of a Board hearing for Timber yield tax matters are the same as procedures for Board hearings for Business Taxes, discussed on page 4-7. However, the Legal Department's Tax and Fee Programs Division will draft a brief for the County Property Tax Division rather than the Valuation Division.⁴⁴

Assessment Practices Survey Sample Items⁴⁵ —The Sampling Process

Functions of the Board

The Board must conduct surveys of each county every five years to determine whether the county assessor is employing adequate tax assessment procedures and practices and performing other required duties.⁴⁶ Surveys of certain counties include a sampling of assessments from the local assessment rolls. The sampling will determine whether the county's assessment levels conform with state law. The Property and Special Taxes Department's Assessment Practices Survey Section performs the surveys and sampling.

Process Before Board Hearing

In conducting the survey, the Assessment Practices Survey Section may audit certain appraisal data related to property included in the survey. The section staff must conduct all research considered essential to show the nature and volume of the assessing work accomplished by the assessor for all classes of property.⁴⁷

For surveys that include a sampling of assessments, the Assessment Practices Survey Section appraises the representative sample items, expands the result of each appraisal, and compares the expanded total to the total local assessment roll to determine the average assessment level of the county. The county will lose the right to receive an allocation of funds to cover its administrative costs for the supplemental assessment roll if

- The average level of assessment in the county is less than 95 percent of the assessment level required by statute, or
- The sum of the absolute values of the differences from the statutorily required assessment level is greater than 7.5 percent of the total amount of the required value.⁴⁸

The assessor has the right to appeal to the Board when the assessor and Board staff do not agree on the results of the Board appraisal.⁴⁹

Appeals Process

The first level of appeal involves field discussions between the county assessor and the County Property Tax Division staff. The county assessor may then appeal to the Chief of the County Property Tax Division.

The next level of appeal is to the Deputy Director of the Property and Special Taxes Department. If the county assessor does not accept the Deputy Director's finding, the county assessor may request a Board hearing by submitting a petition to the Executive Director. The Executive Director receives the petition for Board hearing and schedules the request for Board consideration.

Conduct of Board Hearing

The Board follows the same procedures generally applicable to other property tax hearings.

Annual Meeting With Assessors

The Board Members or their authorized representatives must meet with the county assessors at least once each year to discuss issues related to the administration of property assessment and taxation laws and to promote uniformity of property tax procedures throughout the state.⁵⁰ The county assessors are summoned to the meeting in a *Letter To Assessors* signed by the Executive Director.

Notes

- ¹ California Constitution, article XIII, section 19; Revenue and Taxation Code section 721 et seq.
- ² Revenue and Taxation Code section 731.
- ³ Revenue and Taxation Code section 746.
- ⁴ Revenue and Taxation Code section 756.
- ⁵ Revenue and Taxation Code section 732.
- ⁶ Revenue and Taxation Code section 733.
- ⁷ Revenue and Taxation Code section 733.
- ⁸ California Code of Regulations, title 18, section 5041, subdivision (c).
- ⁹ California Code of Regulations, title 18, section 5076, subdivision (g).
- ¹⁰ Revenue and Taxation Code section 746.
- ¹¹ Revenue and Taxation Code section 747.
- ¹² Revenue and Taxation Code section 748.
- ¹³ Revenue and Taxation Code section 744.
- ¹⁴ California Code of Regulation, title 18, section 5082.2.
- ¹⁵ Revenue and Taxation Code section 758.
- ¹⁶ Revenue and Taxation Code section 11201 and following.
- ¹⁷ Based on the car-day method of assessment in Revenue and Taxation Code section 11293.
- ¹⁸ Revenue and Taxation Code section 11338.
- ¹⁹ Revenue and Taxation Code section 11339.
- ²⁰ California Code of Regulations, title 18, section 5076, subdivision (g).
- ²¹ Revenue and Taxation Code section 11338.
- ²² Revenue and Taxation Code section 11339.
- ²³ Revenue and Taxation Code section 11341.
- ²⁴ Revenue and Taxation Code section 11553.
- ²⁵ California Code of Regulations, title 18, section 5022.
- ²⁶ California Code of Regulations, title 18, section 5076, subdivision (g).
- ²⁷ California Code of Regulations, title 18, section 5077 through 5086.
- ²⁸ Revenue and Taxation Code sections 1840 and 1841.
- ²⁹ California Constitution article XIII, section 11.
- ³⁰ California Code of Regulations, title 18, section 5051.
- ³¹ California Code of Regulations, title 18, section 5052.
- ³² California Code of Regulations, title 18, section 5053.
- ³³ California Code of Regulations, title 18, section 5054.
- ³⁴ California Code of Regulations, title 18, section 5056, subdivision (g).
- ³⁵ Revenue and Taxation Code section 1841.
- ³⁶ Revenue and Taxation Code section 214 et seq.
- ³⁷ Revenue and Taxation Code sections 254.5 and 254.6.
- ³⁸ California Code of Regulations, title 18, section 5063.
- ³⁹ California Code of Regulations, title 18, section 5076, subdivision (g).
- ⁴⁰ California Code of Regulations, title 18, section 5070 thorough 5086.
- ⁴¹ Revenue and Taxation Code section 38101 et seq.
- ⁴² Revenue and Taxation Code section 38402.
- ⁴³ Revenue and Taxation Code sections 38411-38425.
- ⁴⁴ California Code of Regulation, title 18, section 5071.
- ⁴⁵ Government Code section 15640 et seq.
- ⁴⁶ Government Code sections 15640 and 15643.
- ⁴⁷ Government Code sections 15641 and 15642.
- ⁴⁸ Revenue and Taxation Code section 75.60
- ⁴⁹ Government Code section 15640, subdivision (f).
- ⁵⁰ Government Code section 15607.

8. TAXPAYERS' BILL OF RIGHTS

Taxpayers' Bill of Rights

The state Taxpayers' Bill of Rights statutes¹ seek to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the assessment and collection of taxes, to promote improved voluntary compliance by improving efforts to inform the public of the proper application of the laws referenced in the Bill of Rights statutes, and to encourage uniform statewide practices.

Those statutes created the Taxpayers' Rights Advocate office to facilitate the resolution of taxpayer complaints and problems. Under the statutes, the Board is also required to do all of the following:

- Convene annual hearings to hear public comment on administration of the Board's tax and fee programs, tax law, and Board policy and procedures.
- Implement an education and information program directed at taxpayers, Board staff, assessors and their staffs, local boards of equalization, and assessment appeals boards.
- Identify and eliminate areas of frequent taxpayer noncompliance.
- Issue brief and simple publications explaining taxation procedures, remedies, and taxpayers' rights and obligations.
- Evaluate employee performance regarding contact with taxpayers.
- Exercise statutory authority for certain stays and refunds.

Annual Board Hearings

The Board holds annual Taxpayers' Bill of Rights hearings for business taxes and fees and property taxes in Sacramento and Culver City.

At the business taxes hearings, industry representatives and individual taxpayers may present proposals for changes to the business tax laws, programs, policies, or procedures administered by the Board.

The property tax hearings solicit comments and suggestions from assessors, other local agency representatives, and taxpayers on proposed changes to the property tax law, programs, policies, or procedures; address the Advocate's annual report; and identify ways to correct any problems identified in that report.

Arrangement and Coordination of Hearings

The Chiefs of the Board Proceedings Division and Taxpayers' Rights and Equal Employment Opportunity Division share responsibility for coordinating each year's hearings.

Publicity for all hearings is the responsibility of the Chief of the Taxpayers' Rights and Equal Employment Opportunity Division, the Customer and Taxpayer Services Division, and the Board Proceedings Division.

Conduct of the Meeting

The Chair convenes the hearings. Typically, the Chief of the Taxpayers' Rights and Equal Employment Opportunity Division makes introductory remarks and explains the format and purpose of the meeting. Presentations from taxpayers and other interested parties follow.

Hearing participants may comment directly to the Board Members and their staff during the hearings, or they may forward their comments in writing to the Taxpayers' Rights and Equal Employment Opportunity Division for the Members' and staff's consideration.

Issues raised in the hearings that involve specific cases before the Board as part of the normal appeal process should be deferred to the specific case's appeal hearing.

Priority for presentations is given to those placed on the agenda through advance notification to the Chief of the Taxpayers' Rights and Equal Employment Opportunity Division or the Chief of the Board Proceedings Division. The order of presentations follows the agenda.

Individuals who did not give advance notification and wish to make presentations are requested to sign an appearance sheet maintained by the Board Proceedings staff. The order of presentation for these individuals follows the order of the appearance sheet.

The Chief of Board Proceedings Division calls each speaker in the order of the agenda and appearance sheets. For the record, the chief asks each presenter to state his or her name at the beginning of the presentation.

Since the hearings are conducted informally, Members may direct questions or comments to the presenter or staff during the presentation. The Board generally will not take any formal action, but may request staff to report back on issues that have been brought forward by the hearing participants.

The Chair adjourns the hearings after the presentations are complete.

Board Response

After the hearing, the Chief of the Taxpayers' Rights and Equal Employment Opportunity Division coordinates responses to the participants and identifies issues that require Board staff action.

Note

¹ Revenue and Taxation Code section 7080 et seq. (sales and use tax, and similar provisions in other tax and fee programs) and Revenue and Taxation Code section 5900 et. seq. (property tax).



9. CONTRIBUTION DISCLOSURES

Contribution Disclosures

General

A Member of the Board of Equalization, including the State Controller, is disqualified from participating in an adjudicatory proceeding before the Board if any single party, participant, or agent of either has contributed at least \$250 to the Member in the preceding 12 months.¹ However, if the Member returns to the contributor all contributions over \$249, the Member may participate in the proceeding. The law also requires that a Board Member, party, participant, or agent of a party or participant disclose any such contribution on the record. Board staff must inquire and report to the Board any contributions.

Hearing Calendar (Adjudicatory)

On the day of a Board hearing, taxpayers, representatives and witnesses on Board hearing calendars are asked to update previously filed contribution disclosure forms. The Contribution Disclosures Analyst secures any unfiled contribution disclosures before the hearing. Disclosure information is reported to the Board on the record of the hearing by the Chief of the Board Proceedings Division.

Nonappearance Calendar (Consent)

When items are first scheduled for Board action on one of the nonappearance (consent) calendar listed below, they are not adjudicatory matters under Government Code section 15626 and are not subject to the disclosure requirement.

- Franchise and income tax nonappearance matters (proposed opinions and proposed decisions submitted on memorandums)
- Homeowner and Renter Property Tax Assistance nonappearance matters (proposed opinions and proposed decisions submitted on memorandums)
- Sales and use tax and special taxes matters for consideration
- Property taxes matters for consideration

Nonappearance Calendar (Adjudicatory)

Adjudicatory matters on the nonappearance calendar and subject to the disclosure requirement include

- All matters that have been previously scheduled for Board hearing and that have previously appeared on the calendar as adjudicatory items.
- All matters that have been removed from a consent calendar for separate discussion and vote.
- All matters about which a Member has previously contacted the staff or a party.

Nonappearance Matters Calendar

Nonappearance matters that are not subject to the contribution disclosure statute include

- Property tax Board roll corrections
- Board roll changes, findings and decisions (if the decision is final and cannot be changed)
- Escaped assessments
- Offers-in-compromise

Legally Required Participation

When a Board Member's participation is legally required for the action or decision to be made, the Board may bring back as many disqualified Members as necessary to establish a quorum. The preferred means of selecting which disqualified Member should participate is by lot. Other means of random selection or other impartial and equitable means of selection may also be used.²

Campaign Statements

Each Board Member, including the State Controller, is required to send to the Chief of Board Proceedings a copy of the Member's campaign statements at the time each of those statements is filed. Filing dates are set by statute.

Definition of Terms

Party

Any person who is the subject of an adjudicatory proceeding pending before the Board.

Participant

Any person who is not a party but who actively supports or opposes a particular decision in an adjudicatory proceeding pending before the Board and who has a financial interest in the decision. A person actively supports or opposes a particular decision if he or she personally lobbies the Members or employees of the Board, testifies in person before the Board, or otherwise acts to influence the Members.

Agent

Any person who represents a party to or a participant in an adjudicatory proceeding pending before the Board. If a person acting as an agent is also acting as an employee or member of a law, accounting, consulting, or other firm, or a similar entity or corporation, both the entity or corporation and the person are agents.

Close Corporation

For purposes of Government Code section 15626, "close corporation" means a corporation in which any natural person, or any natural person who together with his or her spouse, owns or controls at least 50 percent of the corporation voting stock.³

Contribution

Contribution has the same meaning as in Government Code section 82015 and California Code of Regulations, title 2, section 18215. Generally, a “contribution” means a payment, a forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes. For the full definition of contribution, see the text of Government Code section 82015 and California Code of Regulations, title 2, section 18215, provided in this reference beginning on page 9-4.

Contribution Disclosure Reports

Hearings and Nonappearance Matters

Contribution disclosure reports are furnished to the Members one week before the Board meeting.

Alphabetical Listing

An alphabetical listing of all parties, participants, and agents for adjudicatory and consent matters is furnished to the Members one week before the Board meeting.

Listing of Contribution Disclosure Memorandums Sent to Board Members

This semi-monthly report reflects disqualifying contributions for pending Board hearings that have been disclosed to Board Proceedings Division by parties, participants, and agents. It is furnished to the Members on the 1st and 15th of each month.

Notification of Contributions Made

Members are notified by memorandum when a contribution disclosure statement discloses a contribution made to any Member of the Board or the State Controller.

Reference

Legal Opinion Memos

Contribution Disclosure Opinions are maintained in a reference binder in the Legal Department and in the Board Proceedings Division. These opinions are prepared by the Legal staff in response to inquiries by Board Members and staff with respect to the statute.

Regulations

In accordance with Government Code section 15626, the Board adopted Contribution Disclosure Regulations, found in California Code of Regulations, title 18, sections 7001-7011, effective August 20, 1994. The full text of those regulations is found in this reference beginning on page 9-8.

Contribution Definitions

Government Code section 82015.

(a) "Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

(b)(1) A payment made at the behest of a committee as defined in subdivision (a) of Section 82013 is a contribution to the committee unless full and adequate consideration is received from the committee for making the payment.

(2) A payment made at the behest of a candidate is a contribution to the candidate unless the criteria in either subparagraph (A) or (B) are satisfied:

(A) Full and adequate consideration is received from the candidate.

(B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. The following types of payments are presumed to be for purposes unrelated to a candidate's candidacy for elective office:

(i) A payment made principally for personal purposes, in which case it may be considered a gift under the provisions of Section 82028. Payments that are otherwise subject to the limits of Section 86203 are presumed to be principally for personal purposes.

(ii) A payment made by a state, local, or federal governmental agency or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(iii) A payment not covered by clause (i), made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution. However, payments of this type that are made at the behest of a candidate who is an elected officer shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made. The report shall be filed by the elected officer with the elected officer's agency and shall be a public record subject to inspection and copying pursuant to the provisions of subdivision (a) of Section 81008. The report shall contain the following information: name of payor, address of payor, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made. Once the five thousand dollars (\$5,000) aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source must be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later. Within 30 days after receipt of the report, state agencies shall forward a copy of these reports to the Fair Political Practices Commission, and local agencies shall forward a copy of these reports to the officer with whom elected officers of that agency file their campaign statements.

(C) For purposes of subparagraph (B), a payment is made for purposes related to a candidate's candidacy for elective office if all or a portion of the payment is used for election-related activities. For purposes of this subparagraph, "election-related activities" shall include, but are not limited to, the following:

(i) Communications that contain express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

(ii) Communications that contain reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for elective office.

(iii) Solicitation of contributions to the candidate or to third persons for use in support of the candidate or in opposition to his or her opponent.

- (iv) Arranging, coordinating, developing, writing, distributing, preparing, or planning of any communication or activity described in clauses (i), (ii), or (iii), above.
 - (v) Recruiting or coordinating campaign activities of campaign volunteers on behalf of the candidate.
 - (vi) Preparing campaign budgets.
 - (vii) Preparing campaign finance disclosure statements.
 - (viii) Communications directed to voters or potential voters as part of activities encouraging or assisting persons to vote if the communication contains express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.
- (D) A contribution made at the behest of a candidate for a different candidate or to a committee not controlled by the behesting candidate is not a contribution to the behesting candidate.
- (c) The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events; the candidate's own money or property used on behalf of his or her candidacy other than personal funds of the candidate used to pay either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person if the services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration.
- (d) The term "contribution" further includes any transfer of anything of value received by a committee from another committee, unless full and adequate consideration is received.
- (e) The term "contribution" does not include amounts received pursuant to an enforceable promise to the extent those amounts have been previously reported as a contribution. However, the fact that those amounts have been received shall be indicated in the appropriate campaign statement.
- (f) The term "contribution" does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office if the costs for the meeting or fundraising event are five hundred dollars (\$500) or less.
- (g) Notwithstanding the foregoing definition of "contribution," the term does not include volunteer personal services or payments made by any individual for his or her own travel expenses if the payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.

California Code of Regulations, Title 2, section 18215.

- (a) A contribution is any payment made for political purposes for which full and adequate consideration is not made to the donor. A payment is made for political purposes if it is:
- (1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or
 - (2) Received by or made at the behest of the following or any agent thereof:
 - (A) A candidate;
 - (B) A controlled committee;
 - (C) An official committee of a political party, including a state central committee, county central committee, assembly district committee or any subcommittee of such committee; or
 - (D) An organization formed or existing primarily for political purposes, including, but not limited to, a political action committee established by any membership organization, labor union or corporation.
- (b) The term "contribution" includes:
- (1) Any payment made to a person or organization other than a candidate or committee, when, at the time of making the payment, the donor knows or has reason to know that the payment, or

funds with which the payment will be commingled, will be used to make contributions or expenditures. If the donor knows or has reason to know that only part of the payment will be used to make contributions or expenditures, the payment shall be apportioned on a reasonable basis in order to determine the amount of the contribution.

There shall be a presumption that the donor does not have reason to know that all or part of the payment will be used to make expenditures or contributions, unless the person or organization has made expenditures or contributions of at least one thousand dollars (\$1,000) in the aggregate during the calendar year in which the payment occurs, or any of the immediately preceding four calendar years.

(2) A candidate's own money or property used on behalf of his or her candidacy.

(3) Any goods or services received by or behested by a candidate or committee at no charge or at a discount from the fair market value, unless the discount is given in the regular course of business to members of the public.

(c) Notwithstanding any other provision of this section, the term "contribution" does not include:

(1) An expenditure made at the behest of a candidate in connection with a communication directed to voters or potential voters as part of voter registration activities or activities encouraging or assisting persons to vote, if the expenditure does not constitute express advocacy.

(2) Volunteer personal services or payments made by a person for his own travel expenses, if such payments are made voluntarily without any understanding or agreement that he or she will be repaid.

(3) A payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office, if the total cost of the meeting or fundraising event is \$500 or less, exclusive of the fair rental value of the premises.

(4) A payment made at the behest of a candidate, which is for a communication by the candidate or any other person that meets all of the following:

(i) Does not contain express advocacy;

(ii) Does not make reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for office; and

(iii) Does not solicit contributions to the candidate or to third persons for use in support of the candidate or in opposition to the candidate's opponent.

(5) A payment made by a candidate or committee for another candidate to attend the paying candidate's or committee's fundraiser.

(6) A payment made by a candidate for a communication publicizing his or her endorsement by another candidate, provided that the communication does not expressly advocate the nomination or election of the endorsing candidate or the defeat of an opponent of the endorsing candidate.

(7) A payment made by a ballot measure committee for a communication in which the ballot measure supported or opposed by the committee is endorsed or opposed by a candidate, and the communication does not expressly advocate the nomination or election of the endorsing candidate or the defeat of an opponent of the endorsing candidate.

(8) A payment by:

(i) A regularly published newspaper, magazine or other periodical of general circulation which routinely carries news, articles, and commentary of general interest for the cost of publishing a news story, commentary or editorial; or

(ii) A federally regulated broadcast outlet for the cost of broadcasting a news story, commentary, or editorial.

(9) A payment by an organization for its regularly published newsletter or periodical, if the circulation is limited to the organization's members, employees, shareholders, other affiliated individuals and those who request or purchase the publication. This exception applies only to the costs regularly incurred in publication and distribution. Any additional costs incurred are contributions, including, but not limited to, expanded circulation; substantial alterations in size, style, or format; or a change in publication schedule, such as a special edition.

(10) A payment for a debate or other forum sponsored by a nonpartisan organization in which at least two candidates appearing on the ballot for the same elective office were invited to participate.

(11) A payment for a debate or other forum in which the proponent of a ballot measure and at least one opponent, or their respective representatives, were invited to participate in equal numbers.

(12) A payment for a debate or other forum sponsored by a political party or affiliated committee in which a majority of the candidates for that party's nomination were invited to participate.

(13) A payment made by a bona fide service, social, business, trade, union or professional organization or group for reasonable overhead expenses associated with the organization's regularly scheduled meeting at which a candidate or an individual representing either side of a ballot measure speaks, if the organization pays no additional costs in connection with the speaker's attendance.

(14) A payment received by, directed by, or made at the behest of a candidate for personal purposes. [NOTE: Such payments may constitute gifts, income, or honoraria, and as such may be limited or prohibited, under other provisions of the Act. See also California Code of Regulations, Title 2, section 18941.1 regarding payments for food.]

(15) A payment made by a candidate for a communication in support of or opposition to a ballot measure, if the communication features the endorsing candidate or clearly identifies him or her as the sponsor of the communication. [NOTE: this exception does not include a monetary contribution from a candidate or his or her controlled committee to a ballot measure committee.]

(16) A payment by a sponsoring organization for the establishment and administration of a sponsored committee, provided such payments are reported. Any monetary payment made under this subdivision to the sponsored committee shall be made by separate instrument. A "sponsoring organization" may be any person (see Gov. Code 82047) except a candidate or other individual (see Gov. Code 82048.7). "Establishment and administration" means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, and other expenses incurred in setting up and running a sponsored committee.

(d) A contribution made at the behest of a candidate for a different candidate or to a committee not controlled by the behesting candidate is not a contribution to the behesting candidate.

California Code of Regulations

Title 18. Public Revenues

Division 2.2 State Board of Equalization—Contribution Disclosure

Regulations 7001-7011. Contribution Disclosure.

Reference: Section 15626, Government Code.

7001. Contributions to Members of the State Board of Equalization.

(a) Terms used in Government Code Section 15626 are defined in Sections 7002 through 7011.

7002. Members of the Board of Equalization.

(a) The provisions of Government Code Section 15626 are applicable to the Members of the State Board of Equalization and the State Controller.

(b) For the purposes of Section 15626, if a deputy to the Controller sits at a meeting of the board and votes on behalf of the Controller, the deputy shall disclose contributions made to the Controller and shall disqualify himself or herself from voting pursuant to the requirements of this section.

7003. Adjudicatory Proceedings Pending Before the Board Under Government Code Section 15626.

(a) For purposes of Government Code Section 15626, an “adjudicatory proceeding pending before the board” means any matter pertaining to an issued assessment of tax or fee or refund of tax or fee to a taxpayer or feepayer that has been scheduled and appears as an item on a meeting notice of the board, as required by Government Code Section 11125, as a contested matter for administrative hearing before the board.

(b) A non-appearance agenda item is not considered an adjudicatory proceeding unless the matter has previously appeared on the calendar as a contested matter, or has been removed from the non-appearance agenda for separate discussion and vote, or the agenda item is one about which the member has previously contacted the board staff or a party. A matter which has previously been submitted on the record without an appearance by the taxpayer or taxpayer's representative and without Board discussion of the matter is a non-appearance matter.

(1) The term “removed from the non-appearance agenda for separate discussion and vote” are those agenda items which have been removed from the non-appearance calendar and which have been the subject of a discussion or vote by the Board. It does not include items about which a Board Member raises a procedural question, or a question concerning whether the requirements of Government Code Section 15626 have been met.

(2) The term “contacted the board staff or a party” does not include procedural inquiries by a Board Member or a party, including, but not limited to, inquiries concerning:

(A) when a case will be scheduled for Board consideration or decision;

(B) the status of a particular case;

(C) whether the requirements of Government Code Section 15626 have been met.

(3) The term “contacted the board staff or a party” means and includes any substantive inquiries from a Board Member and/or his or her staff to the board staff. Substantive inquiries include inquiries which are not procedural inquiries and which request information or discussion of legal issues, staff positions, staff or taxpayer theories or other substantive issues concerning a matter on a non-appearance agenda.

(c) Assessments pursuant to Section 19 of Article XIII of the California Constitution are not considered adjudicatory proceedings under Government Code Section 15626.

(d) Rate setting functions fixed or set by the board, including, but not limited to, rates set pursuant to Revenue and Taxation Code Sections 12202.1, 30123, 38115, and 41031, and Health and Safety Code Sections 25205.3, 25205.4, 25205.5, 25205.7, 25205.9, 25174.2 and 25343 are not considered adjudicatory proceedings under Government Code Section 15626.

- (e) Administrative hearings for consideration and adoption of rules and regulations are not considered adjudicatory proceedings under Government Code Section 15626.
- (f) A petition for rehearing is not an adjudicatory item unless removed for separate discussion and vote or the agenda item is one about which the member has contacted board staff or a party.

7004. Party Under Government Code Section 15626.

(a) For purposes of Government Code Section 15626, "party" means any person who is the subject of an adjudicatory proceeding before the board. It does not include a state agency as that term is defined in Chapter 2 (commencing with Section 82000) of Title 9 of the Government Code.

(b) When a close corporation is a "party" to an adjudicatory proceeding pending before the board, the majority shareholder is subject to the disclosure requirements of Government Code Section 15626. For purposes of Section 15626, "close corporation" means a corporation in which any natural person, or any natural person who together with his or her spouse, owns or controls at least 50 percent of the voting stock of a corporation.

7005. Agents Under Government Code Section 15626.

(a) For purposes of Government Code Section 15626, a person is the "agent" of a party to, or a participant in, an adjudicatory proceeding pending before the board only if he or she represents that person in connection with the proceeding. If an individual acting as an agent is also acting as an employee or member of a law, accounting, consulting or other firm, or a similar entity or corporation, both the entity or corporation and the individual are "agents."

(b) To determine whether a contribution of \$250 or more has been made by a person or his or her agent, contributions made by that person within the preceding 12 months shall be aggregated with those made by his or her agent within the preceding 12 months or the period of the agency relationship, whichever is shorter. Contributions from other employees or members of the agent's law, accounting, or consulting firm, or similar entity, or contributions from participants, shall not be aggregated with those of the party and his or her agent.

(c) A person who has not represented a party or a participant during the preceding 12 months shall not be considered an agent for purposes of determining whether Section 15626 applies. A person who has ceased to represent a party or a participant is no longer an agent for purposes of determining whether Section 15626 applies.

7006. Participants Under Government Code Section 15626.

(a) A "participant" means any person who is not a party but who actually supports or opposes a particular decision in an adjudicatory proceeding pending before the board and who has a financial interest in the decision.

(b) For purposes of Government Code Section 15626, a person actually "supports or opposes a particular decision" when he or she:

- (1) Communicates directly, either in person or in writing, with a board member or employees of the board for the purpose of influencing the decision in a proceedings; and/or
- (2) Testifies or makes an oral statement before the board during an adjudicatory proceeding pending before the board for the purposes of influencing the decision of the board; and/or
- (3) Communicates with the employees of the board, or when his or her agent lobbies in person testifies in person or otherwise communicates with board members and/or the employees of the board, for the purpose of influencing the board member's decision in a proceeding and the board member knows or has reason to know that the communication has occurred.

(c) A person does not "actively support or oppose a particular decision" when he or she communicates to the public at large, other than those oral or written communications made in proceedings before the agency.

(d) "Financial interest" has the meaning described in Article I (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code.

(e) A Political Action Committee organized pursuant to 2 U.S.C. Section 441(a)-(b) and/or Government Code Section 82013 is not considered a participant under Government Code Section 15626.

(f) When a close corporation is a participant in an adjudicatory proceeding pending before the board, the majority shareholder is subject to the disclosure requirements of Government Code Section 15626.

7007. Receipt of Contributions Under Government Code Section 15626.

For purposes of Government Code Section 15626,

(a) The term "contribution" has the same meaning prescribed in Government Code Section 82015 and the regulation adopted pursuant thereto. A contribution made pursuant to Section 301(b) of the Federal Election Campaign Act of 1971 (2 U.S.C.A. 431(2)) to a candidate for federal office or to a committee formed for the purpose of electing a candidate for federal office is not considered a contribution within the meaning of Section 15626. A contribution is deemed to be received if it has been accepted or received within the meaning of Government Code Section 84211(q).

(b) A person "accepts" or "receives" a contribution only if the contribution is for that person's own candidacy or own controlled committee.

(c) A person "makes a contribution" to a board member or candidate only if the contribution is made for that board member's or candidate's own candidacy or controlled committee.

(d) A contribution to a board member from a political action committee organized under 2 U.S.C. Section 441(a)-(b) and/or Government Code Section 82013, affiliated with a party participant or agent to a party or participant is not a "contribution" for the purposes of Government Code Section 15626.

7008. Prohibitions and Disqualification Under Government Code section 15626.

(a) For purposes of Government Code Section 15626,

(1) A board member knows or has reason to know that a person has a financial interest in the decision in a pending adjudicatory proceeding if:

(A) The person is a named party; or

(B) The person is a participant and reveals facts in his or her written or oral support or opposition before the board which makes the person's financial interest apparent.

(2) A board member knows, or should have known, about an adjudicatory proceeding pending before the board if either:

(A) The member has received notice of the pending adjudicatory proceeding. Notice includes receipt of an agenda or other written document from the staff identifying the proceeding and the party by name; or

(B) The board member has actual knowledge of the proceeding.

(3) A board member knows, or has reason to know about a contribution if:

(A) The contribution has been disclosed by the party or participant or agent pursuant to Section 15626; or

(B) The board member has actual knowledge of the contribution.

(b) A board member will be considered to have participated under Government Code Section 15626 in a matter if he or she, acting within the authority of his or her office:

(1) Votes on a matter.

(2) Takes part in the discussion regarding the matter.

(3) Urges other board members to reach a particular result in the matter.

(4) Is present and determines not to act when a vote is called without disclosure of the reasons for disqualification.

(c) Nothing in this section shall prevent any member of the board from making, or participating in making, a governmental decision to the extent that the member's participation is legally required

for the action or decision to be made. However, the fact that a member's vote is needed to break a tie does not make the member's participation legally required.

(d) In the event a board member's participation is legally required for the action or decision to be made, the board may bring back as many disqualified members as is necessary to establish a quorum. The preferred means of selecting which disqualified member should participate is by lot. Other means of random selection or other impartial and equitable means of selection may also be used.

7009. Disclosure Under Government Code Section 15626.

(a) A board member who is required by Government Code Section 15626 to disclose the receipt of a contribution shall make the disclosure on the public record at the beginning of the adjudicatory hearing or decision, if a hearing is held.

(b) A written record of any disclosure of receipt of a contribution made by a board member pursuant to Government Code Section 15626 shall be made available to the public.

(c) All statements filed pursuant to Government Code Section 15626 by parties, participants, and agents shall be incorporated into the written record of the proceeding and shall be made available to the public.

(d) The board staff shall report on the record if a hearing is held, or into the written record if no hearing is held:

(1) Whether any party or participant is a close corporation, and if so, the name of its majority shareholder;

(2) Whether any agent is an employee or member of any law, accounting, consulting or other firm, or similar entity or corporation, and if so, its name and address and whether a contribution has been made by any such person, firm, corporation, or entity.

7010. Return of Contribution Under Government Code Section 15626.

(a) If a member receives a contribution which would otherwise require disqualification and he or she returns the contribution within 30 days from the time he or she knows, or has reason to know, about the contribution and the adjudicatory proceeding pending before the board, his or her participation in the proceeding shall be deemed lawful.

(b) For purposes of Government Code Section 15626, a return of that portion of any contribution or contributions over \$249 will be deemed a return of contribution which would otherwise require disqualification and the board member's participation in the proceeding shall be deemed lawful.

7011. Notice of Contribution.

(a) The Notice of Contribution to be completed by all parties, participants and agents, a close corporation and its majority shareholder, shall be on the forms described as Contribution Disclosure forms for parties, participants, or agents.

(b) The Contribution Disclosure form shall inquire of each party, participant, agent and close corporation and majority shareholder whether a contribution has been made to a member, and if so, in what aggregate amount and on what date or dates within the 12 months preceding an adjudicatory proceeding or decision.

(1) Every party, participant, agent and close corporation and majority shareholder shall complete the Contribution Disclosure form prior to any pending adjudicatory proceeding or decision.

(2) Completion of a Contribution Disclosure form is required whether or not the party, participant, agent and close corporation and majority shareholder appears at the pending adjudicatory proceeding or decision.

(3) All parties, participants and agents shall disclose any and all fictitious business names they have utilized.

(c) The disclosure form filed by any party, participant, or agent shall be part of the public record of the related adjudicatory proceeding.

(d) The opinions issued by the Office of the Chief Counsel of the Board of Equalization interpreting Government Code Section 15626 and these regulations thereunder shall be maintained by the Office of Board Proceedings and shall be available to the public.

History: Effective August 20, 1994.

Notes

¹ Government Code section 15626

² California Code of Regulations, title 18, section 7008, subdivisions (c) and (d), and Attorney General Opinion 95-324, November 17, 1995.

³ California Code of Regulations, title 18, section 7004, subdivision (b).

10. RULEMAKING

Rulemaking

Rulemaking Protocol

The Sales and Use Tax Department or the Property and Special Taxes Department (program department), in conjunction with the Legal Department, identifies the need to adopt, amend, or repeal a regulation based on new legislation, a court decision, or other change in interpretation of existing law that has taxpayer impact. Proposed regulatory changes are presented to the Board at committee meetings and public hearings.

Committee Meetings

The program department seeks authorization to publish a proposed regulatory change at a Board committee meeting. Committee meetings are held throughout the year in conjunction with Sacramento Board meetings. Before seeking authorization to publish, the program department seeks comments and suggestions from interested parties to resolve as many issues as possible regarding the proposed regulatory changes.¹ Before the committee meeting, the program department prepares an issue paper, which includes revenue and cost estimates completed by the Research and Statistics Section. The issue paper identifies, either in the body or by attachment, the provisions of the regulatory proposal that can be regarded as consent items and those that remain unresolved. At the committee meeting, the Board accepts public comment and hears the staff recommendation. The Board then decides whether to authorize publication.

If the Board authorizes publication, the Board Proceedings Division's regulations coordinator submits the *Notice of Proposed Regulatory Action* to the Office of Administrative Law for publication in the *California Regulatory Notice Register*, sends the notice to interested parties by U.S. mail and e-mail, and distributes the notice to Board staff. The coordinator also mails the notice and the revenue estimate to the Department of Finance and to legislative committees.

The proposed regulation must be noticed in the *California Regulatory Notice Register*, mailed to interested parties, and posted on the Board's website at least 45 days before the public hearing and close of the public comment period.²

Public Hearings³

No sooner than 45 days after the publication date, the Board holds a public hearing on the proposed regulatory action. At the hearing, an Assistant Chief Counsel describes the proposed regulatory action and provides the staff recommendation. The Board considers the written and oral testimony of interested parties and may ask staff to respond and answer any questions raised by the Members or interested parties. The Board then votes on whether to adopt the proposed regulatory change.

At times, the Board may decide to continue a public hearing by announcing the continuance at the scheduled public hearing or by posting a notice at the entrance to the

Board Room on the originally scheduled date. The Board Proceedings Division notifies the Office of Administrative Law and interested parties of the new public hearing date.

Adoption

The Board may choose to adopt the regulation as published, approve it with changes closely related to the original version, or make changes that are not closely related to the original version.

If the Board adopts the regulation as published, the regulation is forwarded to the Office of Administrative Law for approval and filing with the Secretary of State.⁴

If the Board approves the regulation with changes that are sufficiently related to the original version, the full text, with the changes clearly indicated, is made available to the public for at least 15 days. The Board Proceedings Division's regulations coordinator sends the changed version to interested parties who commented on the original version. At the next Board meeting after the 15-day comment period, the Chief Counsel reports on any comments received and recommends whether the Board should adopt the changed version for filing with the Office of Administrative Law.⁵

If the Board makes changes to the proposed regulation that are not sufficiently related to the original version, the entire rulemaking process begins again.

A *Final Statement of Reasons* must accompany regulations submitted to the Office of Administrative Law for approval and must be posted on the Board's website. The statement must include a response to every public comment submitted orally or in writing regarding the proposed regulation.⁶

Office of Administrative Law⁷

The Office of Administrative Law is charged with the review of regulations as provided in the Administrative Procedure Act. The Office of Administrative Law has 30 working days to review the regulation. If it approves the regulation, the Office of Administrative Law sends the regulation to the Secretary of State for filing. If it does not approve the regulation, the Office of Administrative Law returns it to the Board Proceedings Division for amendment and resubmission within 120 days.

Effective Date

Regulations become effective 30 days after the Office of Administrative Law files them with the Secretary of State. Exceptions to this rule are regulations adopted under a statute requiring a specific effective date—in which case the regulation is effective on the date prescribed by the statute—or a Board request for an earlier or later effective date. The Board must show good cause for an earlier effective date.⁸

Emergency Regulations⁹

When the Board makes a finding that the adoption, amendment, or a repeal of a regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare, the Board may adopt, amend, or repeal that regulation on an

emergency basis. The emergency regulation is effective for only 120 days unless it is adopted through the formal rulemaking process within that time.

Request from Public to Adopt, Amend, or Repeal a Regulation¹⁰

Except as otherwise provided by statute, any person may petition the Board to adopt, amend, or repeal a regulation. The petition shall state clearly and concisely:

- The substance or nature of the regulation, amendment, or repeal requested.
- The reason for the request.
- A reference to the authority of the state agency to take the requested action.

The Board is required to notify the petitioner in writing of the receipt of the petition. Within 30 days, the Board must either deny the petition in writing, indicating why the agency has reached its decision on the merits of the petition, or schedule the matter for public hearing. The Board will normally extend the time limit if the petitioner agrees.

Generally, the following procedure is followed in response to a petition:

- The Legal Department determines whether the submission meets the requirements listed above. If the submission does not meet these requirements, the Legal Department advises the petitioner.
- If the submission meets the requirements, the Board Proceedings Division notifies the petitioner in writing of the receipt of the petition and, when necessary, requests a waiver of the 30-day decision deadline.
- The appropriate program department prepares the necessary Board materials and the Board Proceedings Division places the petition on the Chief Counsel Matters—Rulemaking calendar for Board consideration.
- If the petition is granted in whole or in part, the Board Proceedings Division notifies the petitioner of the Board's decision and begins the rulemaking process.
- If the petition is denied, the Board Proceedings Division notifies the petitioner of the Board's decision.
- The Board's decision is transmitted in writing to the Office of Administrative Law for publication in the *California Regulatory Notice Register*.

Within 60 days of the Board's action on a petition to amend, adopt, or repeal a regulation, any interested party may request reconsideration of the action.

Notes

- ¹ Government Code section 11346.45.
- ² Government Code section 11346.4.
- ³ Government Code section 11346.8.
- ⁴ Government Code section 11347.3
- ⁵ Government Code section 11346.8.
- ⁶ Government Code section 11346.9.
- ⁷ Government Code section 11340 et seq.
- ⁸ Government Code section 11343.4.
- ⁹ Government Code section 11346.1.
- ¹⁰ Government Code sections 11340.6 and 11340.7.

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12. RULES OF PRACTICE

RULES OF PRACTICE of the STATE BOARD OF EQUALIZATION

California Code of Regulations
Title 18. Public Revenues
Division 2. State Board of Equalization
Chapter 10. Petition and Hearing Procedures

ARTICLE 1. APPEALS FROM ACTIONS OF THE FRANCHISE TAX BOARD

5010. DEFINITIONS; BOARD HEARING PROCEDURES; MANNER OF FILING.

(a) The definitions in Article 7, Regulation 5070 shall apply to this Article, and Board hearings on appeals filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7, commencing with Regulation 5070.

(b) Two copies of an appeal to the Board from action by the Franchise Tax Board under the Administration of Franchise and Income Tax Laws or the Senior Citizens Property Tax Assistance Law, along with two copies of any supporting documents, shall be addressed and mailed to the Chief of Board Proceedings, State Board of Equalization in Sacramento, or deposited personally at the headquarters office of the Board in Sacramento. Upon receipt of the appeal, the Board Proceedings Division shall provide one copy of the appeal and one copy of any supporting documents to the Franchise Tax Board in Sacramento, California.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 19045, 19046, 19072, 19085, 19087, 19324, 19331, 19332, 19343, 19344 and 20645, Revenue and Taxation Code.

History: 1. Repealer and deletion of former chapter 10 (sections 5001-5110) adopted 8-31-95; effective 12-30-95.
2. New chapter 10, article 1 and section adopted 8-31-95; effective 1-1-96.
3. Amendment of section heading and repealer and new section 11-19-97; effective 4-8-98.
4. Change without regulatory effect amending subsection (b) filed 7-26-04.

5011. TIMELINESS.

An appeal shall be timely if it is mailed to or received by the Board Proceedings Division within the time specified by the particular statute under which the appeal is taken. Unless expressly stated otherwise in the statute under which the appeal is taken, such statutory period shall be extended 5 days upon service by mail of the action of the Franchise Tax Board being appealed if the place of address is within California, 10 days if the place of address is outside California but within the United States, and 20 days if the place of address is outside the United States. In the absence of other evidence, the post-mark date or the date of delivery to a delivery service as defined in Article 7, Regulation 5070 shall be considered as the mailing date. If the last day for mailing or delivering an appeal falls on a Saturday, Sunday or holiday, the time shall be extended to the next business day.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 19045, 19072, 19084, 19085, 19087, 19324, 19331, 19343 and 20645, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section 11-19-97; effective 4-8-98.
3. Change without regulatory effect amending section and Note filed 7-26-04.

5012. FORM.

(a) The appeal shall be in writing and shall state the fact that an appeal is being made, the name of the taxpayer, the amounts and the years involved, the date when the notice of action was mailed by the Franchise Tax Board, the facts involved and the legal authorities relied on by the taxpayer, including relevant statutes and regulations. Any portion of the tax that the taxpayer concedes is owing shall be

indicated in the appeal. The appeal shall be signed by the taxpayer or by the taxpayer's authorized representative.

(b) If the Franchise Tax Board's notice of action was directed to more than one taxpayer, each taxpayer desiring to contest it shall file an appeal on that taxpayer's own behalf, either separately or jointly with any other taxpayer, and each taxpayer shall satisfy all the requirements of this section in order for the appeal to be treated as filed by that taxpayer.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 19045, 19046, 19072, 19084, 19085, 19087, 19324, 19331, 19332, 19343, 19344 and 20645, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending Note filed 3-19-98.
3. Change without regulatory effect amending subsection (a) filed 7-26-04.

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RULES OF PRACTICE of the STATE BOARD OF EQUALIZATION

California Code of Regulations
Title 18. Public Revenues
Division 2. State Board of Equalization
Chapter 10. Petition and Hearing Procedures

ARTICLE 2. BUSINESS TAXES AND TIMBER YIELD TAX

5020. DEFINITIONS; BOARD HEARING PROCEDURES; TAXES AFFECTED BY THIS ARTICLE.

(a) The definitions in Article 7, Regulation 5070 shall apply to this Article, and Board hearings on petitions and claims filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7, commencing with Regulation 5070.

(b) This Article applies to petitions for redetermination (other than petitions and applications for administrative hearings pertaining to jeopardy determinations, which are subject to Article 3, beginning with Regulation 5030) and claims for refund under the following programs:

Alcoholic Beverage Tax

California Constitution Article XX, Section 22;
Revenue and Taxation Code Sections 32001-32557

California Tire Fee

Public Resources Code Sections 42860-42895;
Revenue and Taxation Code Sections 55001-55381

Childhood Lead Poisoning Prevention Fee

Health and Safety Code Section 105310;
Revenue and Taxation Code Sections 43001-43651

Cigarette and Tobacco Products Tax

California Constitution Article XIII B;
Revenue and Taxation Code Sections 30001-30481

Diesel Fuel Tax

Revenue and Taxation Code Sections 60001-60709

Emergency Telephone Users Surcharge

Revenue and Taxation Code Sections 41001-41176

Energy Resources Surcharge

Revenue and Taxation Code Sections 40001-40216

Hazardous Substances Tax

Revenue and Taxation Code Sections 43001-43651

Insurance Tax

California Constitution Article XIII, Section 28;
Revenue and Taxation Code Sections 12001-13170

Integrated Waste Management Fee

Revenue and Taxation Code Sections 45001-45984

Marine Invasive Species Fee Collection Law

Public Resources Code Sections 71200-71271;
Revenue and Taxation Code Sections 44000-44008, 55001-55381

Motor Vehicle Fuel Tax

California Constitution Article XIX;
Revenue and Taxation Code Sections 7301-8526

Natural Gas Surcharge
Public Utilities Code Sections 890-900;
Revenue and Taxation Code Sections 55001-55381

Occupational Lead Poisoning Prevention Fee
Health and Safety Code Section 105190;
Revenue and Taxation Code Sections 43001-43651

Oil Spill Response, Prevention, and Administration Fees
Revenue and Taxation Code Sections 46001-46751

Sales and Use Tax
(including State-administered local sales, transactions, and use taxes)
Revenue and Taxation Code Sections 6001-7279.6

Timber Yield Tax
Revenue and Taxation Code Sections 423.5, 431-437, 38101-38908

Underground Storage Tank Maintenance Fee
Revenue and Taxation Code Sections 50101-50162

Use Fuel Tax
Revenue and Taxation Code Sections 8601-9355

(c) To the extent that regulations in this Article are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350 and 60522, Revenue and Taxation Code.

History: 1. New article 2 and section adopted 8-31-95; effective 1-1-96.
2. Amendment of article heading and subsections (a) and (b), new subsection (c) and amendment of Note 11-19-97; effective 4-8-98.
3. Amendment of subsection (b) and Note 7-29-99; effective 10-31-99.
4. Amendment of subsection (b) and Note 3-8-01; effective 7-6-01.
5. Amendment of subsection (b) and Note 5-25-04; effective 8-25-04.

5021. CONTENTS OF PETITION FOR REDETERMINATION; AMENDMENTS.

(a) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The taxpayer or the taxpayer's representative shall sign the petition for redetermination.

(b) The petition may be amended to state additional grounds at any time prior to the date the Board issues its order or decision on the petition.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6561.5, 6814, 7710.5, 8851.5, 12428, 30261.5, 32301.5, 38442, 40092, 41086, 43302, 45302, 46352, 50115, 55082 and 60351, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending subsection (a) and Note filed 3-19-98.
3. Amendment of section heading and Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Amendment of subsection (a) and Note 5-25-04; effective 8-25-04.

5022. CLAIMS FOR REFUND.

Every claim for refund shall be in writing and shall state the specific grounds upon which the claim is founded. The taxpayer or the taxpayer's representative shall sign the claim for refund. Although not required by statute to do so, the Board at its discretion may grant hearings on refund claims.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6814, 6904, 8129, 9153, 12979, 30363, 32402, 38603, 40113, 41102, 43452, 45652, 46503, 50140, 55222 and 60523, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending subsection (a) and Note filed 3-19-98.
3. Amendment of section heading and Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Amendment of section and Note 5-25-04; effective 8-25-04.

5023. APPEALS CONFERENCE.

(a) The Board Proceedings Division shall schedule an appeals conference with the parties and a conference holder who is an Appeals Attorney or Appeals Auditor independent of the assessing Department. As requested by the taxpayer, an appeals conference may be held at the Sacramento headquarters of the Board, a district office, by videoconference or by telephone. The appeals conference is an informal discussion of the relevant facts and applicable laws and regulations. The appeals conference is not an adversarial proceeding. Subpoenas are not issued for appeals conferences and testimony is not taken under oath; however, the conference holder will accept written statements made under penalty of perjury. The appeals conference is not recorded, videotaped or reported by the conference holder. Taxpayers may arrange for the appeals conference to be recorded or reported. If the appeals conference is recorded or reported, the taxpayer shall make a copy of the tape or transcript available to the conference holder upon request.

(b) Rescheduling and Postponements. Requests to reschedule or postpone appeals conferences shall be directed to the Board Proceedings Division.

(1) Rescheduling. If there is a scheduling conflict for an appeals conference scheduled to be held in person at headquarters, by videoconference or by telephone, the appeals conference may be rescheduled to accommodate the parties. At the discretion of the Chief of Board Proceedings, a second rescheduling may be allowed. The Board Proceedings Division may reschedule an appeals conference scheduled to be heard at a district office to a different district office, to headquarters, to a videoconference, or a telephone conference, or may postpone the appeals conference to the same district office as provided in subdivision (b)(2).

(2) Postponement. Postponements are only applicable to appeals conferences that are scheduled at a district office. A postponement results in the case being placed back into the inventory of unassigned cases. If a party requests a postponement of an appeals conference to be held at the district office within 15 days after the date of the notice of the appeals conference sent by the Board Proceedings Division and has sufficient justification for requesting the postponement, the Board Proceedings Division may allow the postponement. If a party requests a postponement of the appeals conference later than 15 days after the date of the notice of the appeals conference, and can demonstrate extreme hardship for requesting the postponement, the Board Proceedings Division may allow the postponement. While only one postponement may be granted, an appeals conference may be rescheduled as provided in subdivision (b)(1).

(c) Failure to Respond or Appear; Waiver.

(1) If the taxpayer fails to respond to the notice of the appeals conference sent by the Board Proceedings Division by the deadline stated in the notice, or responds to the notice but fails to appear for

the appeals conference, the conference holder shall conduct the appeals conference as scheduled with the Department.

(2) A party may waive appearance at the appeals conference.

(d) Submission of Additional Documents.

(1) A party may submit additional documents to the Appeals Division at any time before or during the appeals conference. If a party submits additional documents, the other party shall have the opportunity to respond to the documents either at the appeals conference or within 15 days after the appeals conference.

(2) If at an appeals conference a party requests time to submit additional documents, the party shall have 15 days after the appeals conference to submit the documents. The other party shall have an additional 15 days to respond to the documents submitted. If there is sufficient justification, the conference holder may extend the time period for either party by an additional 15 days. Neither party shall be allowed any further additional time to submit or respond to documents unless approved by either the Assistant Chief Counsel of the Appeals Division or his or her designees.

(3) A conference holder may contact either or both of the parties after the appeals conference in order to obtain clarification of the issues, or additional information on the issues. However, the conference holder shall not rely on any information obtained after the appeals conference in deciding an issue against a party, without giving that party an opportunity to respond to the information.

(e) Within 90 days after the submission of any additional documents as authorized in subdivision (d) above, the conference holder shall issue a written report of his or her findings, called a Decision and Recommendation, copies of which shall be sent to all parties. If a party did not appear at the appeals conference, the Decision and Recommendation will be based on the information in the file and the information obtained from the other party. The Chief Counsel or his or her designee may allow additional time beyond the 90 days to prepare the Decision and Recommendation. Both the request for additional time and the granting of additional time shall be in writing and copies provided to all parties to the conference.

(f) If the taxpayer or the Department has requested an oral hearing prior to, or within 30 days of, the date that the Decision and Recommendation was mailed to the taxpayer, an oral hearing before the Board will be scheduled. If an oral hearing before the Board is not requested, official notice of the Board's action on the Decision and Recommendation will be mailed to the taxpayer.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350 and 60522, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.

2. Amendment of section and Note 11-19-97; effective 4-8-98.

3. Amendment of section and Note 7-29-99; effective 10-31-99.

4. Amendment of section and Note 3-8-01; effective 7-6-01.

5. Amendment of subsections (a), (b), (d), (f), and Note 5-25-04; effective 8-25-04.

5024. COMBINED CLAIMS FOR REFUND ON BEHALF OF CLASS OF TAXPAYERS. (Sales and Use Tax, including State-administered local sales, transactions, and use taxes.)

(a) This regulation applies only to combined claims for refund of the Sales and Use Tax, including State-administered local sales, transactions, and use taxes.

(b) Procedures Required of Class Representative. The representative claiming a refund on behalf of members of a class shall establish:

(1) That it is more beneficial to the class and to the State to proceed as a combined claim for refund rather than individually.

(2) The existence and the composition of the class, including:

(A) A description of the members sufficient to identify the persons making up the class.

(B) The approximate number of persons in the class.

(C) The manner in which and the time when the class members shall be identified and notified of the pendency of the combined claim.

(3) The issues of law and the issues of fact that are common to all class members and those that are not, and the approximate number of class members affected by each issue that is not common to all.

(4) The representative's written authority to act as representative for each class member, which authority shall authorize the Board Staff to release to the representative any confidential information in the Board's files that may be required in connection with the claim. This statement may include a separate claim for refund by the class member or may state that the class member joins in the combined claim.

(5) That the representative is a member of the class and when and how the representative became a member. In addition, any unique legal or factual issues pertaining to the representative's claim and any differences between the representative's status as a class member and that of any other class member shall be described.

(6) That the representative can fairly and adequately protect the interests of each member of the class and that the representative's interests are not antagonistic to members of the class.

(7) When requested by the Board Staff, that each member of the class has been notified of the pendency of the claim and each member has had a reasonable opportunity to join in or be excluded from the combined claim.

(c) Action to be Taken by Board Staff.

(1) If the Board Staff finds that the claim is a proper combined claim it shall, to the extent possible, act upon the claim in the same manner that it would act on any other claim. If the Board Staff finds that the claim is not a proper combined claim, it shall act only on claims by individual members and notify the representative that the claim is not valid as to others. In determining the amount of any refund due to any member of the class, the refund shall be limited to the amount of tax overpayment by that member under the tax law pursuant to which the claim was filed.

(2) Before a refund will be made to any member of the class, the amount of the tax overpayment by the member shall be established and the representative or member shall furnish or make available to the Board Staff all contracts, documents, or records (or copies thereof) necessary to verify the overpayment and the amount thereof. If such contracts, documents, or records are not presented to or made available to the Board Staff, the representative or member, shall be deemed to have failed to exhaust the administrative remedies.

(d) Effect of Action on Combined Claims.

(1) Failure to commence a court action within 90 days after the mailing of the notice of the Board's action on a refund claim as provided in the tax law pursuant to which the claim was filed constitutes a waiver of any demand against the state on account of alleged overpayments. This waiver, however, does not apply with respect to persons who have not previously been notified of the claim, or who have notified the Board Staff that they desire to be excluded from the combined claim. Nor does the waiver apply with respect to persons involved in a claim to the extent it has been declared invalid as distinguished from persons as to whom a claim has been denied.

(2) A judgment in any court action filed with respect to the denial of any claim is res judicata as to the claimant's tax liability or overpayments for the period involved.

Note: Authority: Section 15606(a), Government Code; and Sections 7051, 7202, 7203, 7261, 7262, and 7270, Revenue and Taxation Code.

Reference: Sections 6814, 6904 and 6932, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of subsections (b)(4),(c)-(c)(2) and (d)(1) 11-19-97; effective 4-8-98.
3. Change without regulatory effect amending subsection (b) and Note filed 7-26-04.

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RULES OF PRACTICE of the STATE BOARD OF EQUALIZATION

California Code of Regulations
Title 18. Public Revenues
Division 2. State Board of Equalization
Chapter 10. Petition and Hearing Procedures

ARTICLE 3. HEARINGS ON JEOPARDY DETERMINATIONS

5030. DEFINITIONS; BOARD HEARING PROCEDURES; TAXES AFFECTED BY THIS ARTICLE.

(a) The definitions in Article 7, Regulation 5070 shall apply to this Article, and Board hearings on petitions and applications filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7, commencing with Regulation 5070.

(b) This Article applies to jeopardy determinations, and jeopardy assessments of private railroad cars, issued under the following programs, and provides two alternative means to challenge a jeopardy determination or jeopardy assessment: filing a petition for redetermination or reassessment and stay of collection pursuant to Regulation 5031; and filing an application for an administrative hearing pursuant to Regulation 5032:

Alcoholic Beverage Tax

California Constitution Article XX, Section 22;
Revenue and Taxation Code Sections 32001-32557

California Tire Fee

Public Resources Code Sections 42860-42895;
Revenue and Taxation Code Sections 55001-55381

Childhood Lead Poisoning Prevention Fee

Health and Safety Code Section 105310;
Revenue and Taxation Code Sections 43001-43651

Cigarette and Tobacco Products Tax

California Constitution Article XIII B;
Revenue and Taxation Code Sections 30001-30481

Diesel Fuel Tax

Revenue and Taxation Code Sections 60001-60709

Hazardous Substances Tax

Revenue and Taxation Code Sections 43001-43651

Integrated Waste Management Fee

Revenue and Taxation Code Sections 45001-45984

Marine Invasive Species Fee Collection Law

Public Resources Code Sections 71200-71271;
Revenue and Taxation Code Sections 44000-44008, 55001-55381

Motor Vehicle Fuel Tax

California Constitution Article XIX;
Revenue and Taxation Code Sections 7301-8526

Natural Gas Surcharge

Public Utilities Code Sections 890-900;
Revenue and Taxation Code Sections 55001-55381

Occupational Lead Poisoning Prevention Fee

Health and Safety Code Section 105190;
Revenue and Taxation Code Sections 43001-43651

Oil Spill Response, Prevention, and Administration Fees
Revenue and Taxation Code Sections 46001-46751

Private Railroad Car Tax
Revenue and Taxation Code Sections 11201-11702

Sales and Use Tax
(including State-administered local sales, transactions, and use taxes)
Revenue and Taxation Code Sections 6001-7279.6

Timber Yield Tax
Revenue and Taxation Code Sections 38101-38908

Underground Storage Tank Maintenance Fee
Revenue and Taxation Code Sections 50101-50162

Use Fuel Tax
Revenue and Taxation Code Sections 8601-9355

(c) To the extent that regulations in this Article are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6538, 6538.5, 7700, 7700.5, 8828, 8828.5, 11353, 30243, 30243.5, 32312, 32313, 38433, 38435, 43351, 43352, 45352, 45353, 46302, 46303, 50120.2, 50120.3, 55102, 55103, 60332 and 60333, Revenue and Taxation Code.

History: 1. New article 3 and section adopted 8-31-95; effective 1-1-96.
2. Amendment of subsections (a) and (b), new subsection (c) and amendment of Note 11-19-97; effective 4-8-98.
3. Amendment of subsection (b) and Note 7-29-99; effective 10-31-99.
4. Amendment of subsection (b) and Note 3-8-01; effective 7-6-01.
5. Amendment of subsection (b) and Note 5-25-04; effective 8-25-04.

5031. PETITION FOR REDETERMINATION OR REASSESSMENT AND STAY OF COLLECTION ACTIVITIES.

The person against whom a jeopardy determination or a jeopardy assessment is made may petition for redetermination or reassessment thereof if the person, within 10 days after service of the notice of the jeopardy determination or jeopardy assessment, files a petition for redetermination or reassessment and within that period deposits with the Board such security as the Board deems necessary to secure compliance with the tax law or laws pursuant to which the determination is made or to insure payment of the amount due for the assessment. The petition shall be in writing and shall state the specific grounds upon which it is based. The filing of the petition and depositing of the required security shall stay further collection activities until such time as the determination or assessment becomes final. Board Staff review of such petitions shall be governed by the procedures set forth in Article 2, Regulation 5023.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6538, 6538.5, 7700, 7700.5, 8828, 8828.5, 11353, 11354, 30243, 30243.5, 32312, 32313, 38433, 43351, 43352, 45352, 45353, 46302, 46303, 50120.2, 50120.3, 55102, 55103, 60332 and 60333, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section heading, section and Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Change without regulatory effect amending Note filed 7-26-04.

5032. APPLICATION FOR ADMINISTRATIVE HEARING.

(a) Within 30 days after service of the notice of jeopardy determination or jeopardy assessment, the taxpayer against whom a jeopardy determination or jeopardy assessment has been made may, with or without complying with the requirements of Regulation 5031, apply for an administrative hearing.

(b) The taxpayer may apply for such a hearing for one or more of the following purposes:

- (1) to establish that the determination or assessment is excessive;
- (2) to establish that the sale of property that may have been seized after issuance of the jeopardy determination or jeopardy assessment or any part thereof, should be delayed pending the administrative hearing because the sale would result in irreparable injury to the person;
- (3) to request the release of all or a part of the seized property to the person;
- (4) to request a stay of collection activities.

(c) The application shall be in writing and shall state the specific factual and legal grounds upon which it is founded.

(d) No security need be posted to obtain this hearing. Unless the person complies with the provisions of Regulation 5031 relating to the deposit of security, the filing of the petition shall not operate as a stay of collection activities except sale of the property seized.

(e) Upon a showing of reasonable cause for failure to file a timely petition for administrative hearing, the Board may allow a late filing of the petition and grant petitioner an administrative hearing.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103 and 60333, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of subsections (a), (b)(1)-(3) and (e) and amendment of Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Change without regulatory effect amending Note filed 7-26-04.

5033. EFFECT OF FILING APPLICATION.

With respect to a jeopardy determination or a jeopardy assessment, the seized property shall not be sold without the consent of the owner during the first 30 days after service of the notice of jeopardy determination or jeopardy assessment nor while a timely application for an administrative hearing is pending. The storing of the property during the period the application is pending shall be at the applicant's expense.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6538, 6538.5, 7700, 7700.5, 8828, 8828.5, 11353, 30243, 30243.5, 32312, 32313, 38433, 38435, 43351, 43352, 45352, 45353, 46302, 46303, 50120.2, 50120.3, 55102, 55103, 60332 and 60333, Revenue and Taxation Code.

- History:* 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section and Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Change without regulatory effect amending Note filed 7-26-04.

5034. ADMINISTRATIVE HEARING.

An administrative hearing shall be scheduled promptly after the filing of the application. The administrative hearing shall be conducted as an appeals conference, following the procedures set forth in Article 2, Regulation 5023. When an oral hearing before the Board is requested, the hearing shall be scheduled as soon as practicable. The Board shall give the applicant at least 10 days' notice of the time and place of the hearing.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103 and 60333, Revenue and Taxation Code.

- History:* 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section heading, section and Note 11-19-97; effective 4-8-98.
3. Amendment of section and Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Change without regulatory effect amending Note filed 7-26-04.

5035. ADMINISTRATIVE HEARING ORDER.

The Appeals Attorney or Appeals Auditor may find that the applicant is not entitled to the relief requested or may order that one or more of the following types of relief be granted: that the sale of the property will irreparably damage the applicant and that the property shall not be sold; that the property, or a portion thereof, be released to the applicant or to the person from whom it was seized; that the tax as determined is excessive and that the amount of the determination be reduced.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6538.5, 7700.5, 8828.5, 30243.5, 32313, 38435, 43352, 45353, 46303, 50120.3, 55103 and 60333, Revenue and Taxation Code.

- History:* 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section heading, section and Note 11-19-97; effective 4-8-98.
3. Amendment of section and Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Change without regulatory effect amending Note filed 7-26-04.

5036. NOTICES.

Any notice given pursuant to this article shall be served personally or by mail in the manner prescribed by statute for service of notice of a deficiency determination.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 30451, 32451, 38701, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6538.5, 7700.5, 8828.5, 11352, 30243.5, 32313, 38434, 43352, 45353, 46303, 50120.3, 55103 and 60333, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending Note filed 3-19-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Change without regulatory effect amending Note filed 7-26-04.



RULES OF PRACTICE of the STATE BOARD OF EQUALIZATION

California Code of Regulations
Title 18. Public Revenues
Division 2. State Board of Equalization
Chapter 10. Petition and Hearing Procedures

ARTICLE 4. STATE ASSESSEES AND PRIVATE RAILROAD CAR COMPANIES

5040. DEFINITIONS; BOARD HEARING PROCEDURES; HEARINGS ON PETITIONS FOR REASSESSMENT OF UNITARY OR NONUNITARY VALUES; CORRECTION OF ALLOCATED VALUES OF PUBLIC UTILITIES AND REASSESSMENT OF PRIVATE RAILROAD CARS; CONTENTS OF PETITIONS; ASSESSMENT FACTOR HEARINGS.

(a) The definitions in Article 7, Regulation 5070 shall apply to this Article, and Board hearings on petitions filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7, commencing with Regulation 5070.

(b) This Article applies to petitions for reassessment of unitary or nonunitary values, petitions for correction of allocated values of public utilities, and petitions for reassessment of private railroad cars and sets forth the procedures applicable to state assesses and private railroad car taxpayers in making oral and written presentations at Assessment Factor Hearings.

(c) The Board shall hear petitions as follows:

(1) The Board shall hear petitions for reassessment of unitary or nonunitary values between the date of receipt of a timely filed petition for reassessment and December 31 and render its decisions on individual petitions no later than December 31 each year.

(2) The time for filing of and hearing and decision on petitions for correction of allocated values of public utilities shall be as required by Sections 746, 747, 748, and 749 of the Revenue and Taxation Code.

(3) The time for filing of and hearing and decision on petitions for reassessment of private railroad cars shall be as required by Sections 11338, 11339, 11340, and 11341 of the Revenue and Taxation Code.

Note: Authority: Section 15606(a), Government Code; Section 11651, Revenue and Taxation Code.

Reference: Sections 110, 721, 741, 742, 743, 744, 746, 747, 748, 749, 11251, 11291, 11293, 11294, 11336, 11338, 11339, 11340, 11341 and 11353, Revenue and Taxation Code.

History: 1. New article 4 and section adopted 8-31-95; effective 1-1-96.

2. Amendment of section heading, section and Note 11-19-97; effective 4-8-98.

5041. FILING AND CONTENTS OF PETITION; REQUEST FOR ORAL HEARING; WRITTEN ONLY PETITIONS; STAFF RESPONSE; EXTENSION OF TIME.

(a) Board Staff shall send a notice to each assessee setting forth the amount of assessed value and the date by which a petition for reassessment may be filed.

(b) The appropriate Board Staff capitalization rate study and final calculations of the value indicators shall be made available, between the time that the Board values the subject property and the deadline for filing a petition, to any petitioner submitting a written request therefor to the Chief, Valuation Division, State Board of Equalization.

(c) Petition; Oral Hearing; Written Only.

(1) The petition shall be in writing and shall provide the following information:

(A) The name and address of the petitioner.

(B) The name and address of the petitioner's agent, if any. If the petitioner is represented by an agent, both the petitioner's actual mailing address and the agent's mailing address shall be provided on the petition.

(C) The petitioner's opinion of value.

(D) The Board adopted value.

(E) The facts relied upon to support the requested change in value.

(F) For nonunitary property, the property identification information and location.

(G) Whether the petition constitutes a claim for refund under Revenue and Taxation Code section 5148, subdivision (f).

(H) Whether an oral hearing is requested.

(I) A statement of the precise elements of the Board's valuation being contested.

(J) Petitioner's appraisal reports, financial studies, and other supporting documents relevant to value.

(K) The signature of the petitioner or petitioner's agent. If a petition is signed by an agent, including an attorney licensed to practice law in the State of California, the agent must be authorized by the petitioner prior to the time the petition is filed. The following language shall be contained in the signature block of the petition:

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information herein, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief and that I am: (1) an officer, partner, or employee of the petitioner authorized to sign this petition; (2) an agent authorized by the petitioner; or (3) an agent who is an attorney licensed to practice law in the State of California, State Bar No. _____, who has been retained by the petitioner and has been authorized by the petitioner to file this petition.

(L) A statement of authorization, if required as specified herein or under subdivision (c)(2) below. If the petition is signed by an agent, other than an attorney licensed to practice law in the State of California, a statement of authorization, as described herein, or a power of attorney, as defined in Regulation 5073, subdivision (d), shall be filed with the petition. A statement of authorization shall be in writing and shall include the following information:

(1) The name and address of the petitioner.

(2) The petitioner's State Board of Equalization company identification number.

(3) The name, address, and telephone and fax numbers of the agent(s).

(4) A statement that the agent(s) is authorized to file the petition and represent the petitioner in the appeal that is the subject of the petition.

(5) The signature of an officer, partner, or an employee who has been designated by petitioner in writing to sign such a statement on behalf of the petitioner.

(2) In the event duplicate petitions are filed with the Chief of Board Proceedings, the Chief of Board Proceedings shall determine which petition was authorized by the petitioner. The Chief of Board Proceedings may require a statement of authorization, as defined in subdivision (c)(1)(L) above, or a power of attorney, as defined in Regulation 5073, subdivision (d). The Chief of Board Proceedings shall contact the petitioner and/or the agent(s) who filed the duplicate petitions by telephone, electronic mail, or facsimile machine and by registered or certified mail with return receipt, and shall allow 10 days for a written response. In the event no written response is received after 10 days, the first petition received will be accepted and all other petitions will be rejected as duplicate petitions. For purposes of this regulation, "duplicate petition" means a petition filed by the petitioner, or its agent on its behalf, subsequent to the petition previously filed by or on behalf of the same petitioner for the same assessment year at issue. A

subsequent petition that seeks to amend a previously filed petition shall not be considered a duplicate petition for purposes of this regulation.

(3) Petitioner is required to submit to the Chief of Board Proceedings 10 copies of the petition and supporting documents at the time the original petition and supporting documents are filed. The petition and supporting documents, with the required 10 copies, shall be accepted for filing if addressed and transmitted to the Chief of Board Proceedings, State Board of Equalization, at Sacramento, or if deposited personally at the headquarters office of the Board in Sacramento no later than the deadline set forth in Revenue and Taxation Code sections 731, 732, 11338, and 11339. For purposes of this subdivision, transmitted means (A) posted for delivery by the United States Postal Service or a bona fide courier service; (B) sent by a facsimile machine; or (C) sent by electronic mail. If transmitted by facsimile machine or electronic mail, all original documents must be forwarded to the Chief of Board Proceedings within a reasonable period of time.

(4) Written findings and decision may be requested at the time of filing the petition, or at any time prior to the commencement of the hearing.

(d) The Board Staff shall submit an analysis of the petition, the related supporting documents and a staff recommendation for Board Action no later than 30 days prior to the date set for hearing or other action on the petition. The analysis and recommendation shall be submitted to the Chief of Board Proceedings, and a copy shall be sent to the petitioner.

(e) The petitioner may file a written response to the staff analysis and recommendation no later than 15 days before the date set for hearing or other action on the petition. The response shall be submitted to the Chief of Board Proceedings.

(f) The Chief of Board Proceedings, upon a showing of reasonable cause, may grant an extension for a reasonable period of time under (c), (d), or (e) above. The request for an extension of time shall be submitted in writing no later than 5 p.m. on the last business day set for filing the materials.

(g) The Board Proceedings Division shall distribute the petition and related supporting documents, the staff analysis and recommendation, and the petitioner's response to the Board, the petitioner and the staff at the time agenda materials are distributed for the Board meeting at which the petition is scheduled for hearing or other action.

(h) The petition and related supporting documents, the staff analysis and recommendation and related supporting documents, and the petitioner's response to the staff analysis and recommendation which petitioner timely submitted to the Chief of Board Proceedings shall be the only documents accepted for filing and distribution by Board Proceeding Division prior to the date the petition is scheduled for hearing or other action; and any documents not timely submitted to the Chief of Board Proceedings shall not be accepted for filing and shall be returned to the party submitting them.

Note: Authority: Section 15606(a), Government Code; and Section 11651, Revenue and Taxation Code.

Reference: Sections 731, 732, 733, 741, 742, 743, 744, 746, 747, 748, 11338, 11339, 11340 and 11353, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.

2. Amendment of section heading, repealer and new section and amendment of Note 11-19-97; effective 4-8-98.

3. Amendment of subsection (h) 7-29-99; effective 10-31-99.

4. Change without regulatory effect amending subsection (a) filed 6-11-01.

5. Amended 1-25-05; effective 4-29-05.

5042. TIMELINESS OF FILINGS.

A petition, staff analysis and recommendation, or response to staff analysis and recommendation shall be timely if it is mailed to or received by the Chief of Board Proceedings at the headquarters office of the Board in Sacramento within the time specified by these rules. In the absence of other evidence, the postmark date or the date of delivery to a delivery service as defined in Article 7, Regulation 5070 shall be considered as the mailing date. If the last day for mailing a petition falls on a Saturday, Sunday or holiday,

the time shall be extended to the next business day. If the petition is not timely, it shall be dismissed. If it is incomplete, as through omission of any of the requirements specified in Regulation 5041, it may be dismissed.

Note: Authority: Section 15606(a), Government Code; and Section 11651, Revenue and Taxation Code.

Reference: Sections 731, 732, 733, 741, 11338, 11339 and 11353, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.

2. Amendment of section heading, and section 11-19-97; effective 4-8-98.

3. Change without regulatory effect amending section filed 6-11-01.

4. Change without regulatory effect amending section filed 7-26-04.

5043. ASSESSMENT FACTOR HEARINGS.

The Board may annually conduct hearings to be called "Assessment Factor Hearings" to receive public testimony on issues relating to capitalization rates and other factors affecting values of California state-assessed property and private railroad cars. No later than 30 days prior to the hearing, state assessees and private railroad car taxpayers, or other persons wishing to be listed on the agenda, shall notify the Chief of Board Proceedings if they intend to make oral presentations at the hearing. Testimony of persons who do not notify the Chief of Board Proceedings as set forth above will be heard after those on the agenda have completed their oral presentations. The Board may place reasonable time limits on any presentation. In lieu of oral presentations, state assessees or private railroad car taxpayers may submit written presentations to the Chief of Board Proceedings no later than the date of the hearing.

Note: Authority: Section 15606(a), Government Code; and Section 11651, Revenue and Taxation Code.

Reference: Sections 110, 721, 11251, 11291, 11292, 11293 and 11294, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.

2. Amendment of section 3-8-01; effective 7-6-01.

3. Change without regulatory effect amending section filed 7-26-04.



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ARTICLE 5. TAXABLE PROPERTY OF A COUNTY, CITY, OR MUNICIPAL CORPORATION

5050. DEFINITIONS; BOARD HEARING PROCEDURES; APPLICATION FOR REVIEW, EQUALIZATION, AND ADJUSTMENT.

(a) The definitions in Article 7, Regulation 5070 shall apply to this Article, and Board hearings on applications filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7, commencing with Regulation 5070.

(b) A county, city, city and county or municipal corporation may secure the review, equalization and adjustment of an assessment of its lands and improvements by the Board in pursuance of Section 11 of Article XIII of the Constitution by application therefor made in accordance with this Article and Section 1840 of the Revenue and Taxation Code.

Note: Authority: Section 15606(a), Government Code.

Reference: Section 11, Article XIII, California Constitution; and Section 1840, Revenue and Taxation Code.

History: 1. New article 5 and section adopted 8-31-95; effective 1-1-96.

2. Change without regulatory effect amending subsection (a) and Note filed 3-19-98.

5051. FORM OF APPLICATION.

The application shall be made in writing to the Board and shall be authorized by the governing body of the county, city, city and county or municipal corporation seeking relief. The official document authorizing the application shall be included. The application need not be under oath. The application shall show the facts claimed to require action by the Board, and shall include or be accompanied by a statement of legal authorities, including relevant statutes and regulations.

Note: Authority: Section 15606(a), Government Code.

Reference: Section 1840, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.

2. Amendment of section 3-8-01; effective 7-6-01.

5052. TIME AND PLACE OF FILING; COPIES.

(a) If the assessment objected to is one made during the regular period for such assessments, the application shall be filed with the Chief of Board Proceedings of the Board at its headquarters office in Sacramento on or before the third Monday in July of the year in which the assessment is made, or within two weeks after the completion of the local roll containing the assessment, whichever is later. The regular assessment period is from January 1 to and including July 1 or to such later date for completion of the roll as may be authorized by the Executive Director of the Board. If the assessment objected to is one made outside the regular period for such assessments, the application shall be filed within 60 days from the date the tax bill is mailed to the assessee.

(b) A copy of the application, together with any separate statement of legal authorities, including relevant statutes and regulations, shall be filed by the applicant with the assessor whose assessment is questioned and with the governing body of the tax agency. A statement of the fact of filing with the assessor and the taxing agency shall be endorsed upon the application.

Note: Authority: Section 15606(a), Government Code.

Reference: Section 1840, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of subsection (a) 11-19-97; effective 4-8-98.
3. Change without regulatory effect amending subsection (a) filed 7-26-04.

5053. ANSWER TO APPLICATION.

Prior to the hearing by the Board, the assessor whose assessment is questioned and the taxing agency shall file a written answer to the application and a statement of legal authorities, including relevant statutes and regulations. The failure to file an answer shall not constitute a default or an admission of any matters set forth in the application. Copies of the answer and of the legal authorities shall be mailed to the applicant. A statement that mailing was made shall be endorsed upon the answer.

Note: Authority: Section 15606(a), Government Code.

Reference: Section 1840, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section 11-19-97; effective 4-8-98.
3. Amendment of section 3-8-01; effective 7-6-01.

5054. PREHEARING CONFERENCE.

A prehearing conference shall be held for each application for which a hearing is to be held under these regulations. The conference shall be conducted at the headquarters office of the Board in Sacramento at a time to be arranged by Board Staff suitable for the parties or their representatives. A Board Attorney shall preside at the conference. The purpose of this procedure is to clarify and define the issues, examine the application and answer for necessary amendments, place the case in focus so that the defined and precise issues may be resolved as quickly as possible, give notice of matters not necessarily revealed by the application and answer, enter into stipulations on matters on which agreement has been reached by the parties, and arrange for the exchange of copies of appraisal reports and exhibits prior to the hearing.

Board Staff shall prepare a concise and descriptive statement of the nature of the case and summary of the matters agreed upon or admitted at the conference. This statement shall be placed in the record at the commencement of the hearing.

Note: Authority: Section 15606(a), Government Code.

Reference: Section 1840, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending section filed 3-19-98.

5055. NOTICE OF HEARING.

Notice of hearing shall be sent in accordance with the procedures set forth in Article 7, Regulation 5076(b). The notice shall contain a statement that (subject to the limitations of Sections 3(b) and 11, Article XIII of the Constitution) the Board is required to find the full cash value of the property that is the subject of the hearing and that this finding may exceed the value on which the assessment is based.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 3(b) and 11, Article XIII, California Constitution; and Section 1840, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section heading, repealer and new section, and amendment of Note 11-19-97; effective 4-8-98.
3. Change without regulatory effect amending section and Note filed 7-26-04.

5056. BOARD APPRAISED PROPERTY.

If a property that has been appraised by Board Staff becomes the subject of a proceeding under this Article, both parties to the proceeding shall be informed of the fact that the appraisal has been made. Each party, upon request, shall have access to the appraisal records. Either party or the Board Staff may call the appraiser or the appraiser's supervisor as a witness and may offer the appraisal records as an exhibit. A party desiring to call the appraiser or the appraiser's supervisor as a witness shall, at least ten days prior to the hearing, notify the Chief of Board Proceedings of its intention to call such witness.

Note: Authority: Section 15606(a), Government Code.

Reference: Section 1840, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section 11-19-97; effective 4-8-98.
3. Change without regulatory effect amending section filed 7-26-04.

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ARTICLE 6. PROPERTY TAX WELFARE EXEMPTION CLAIM REVIEW PROCEDURE.

5060. DEFINITIONS; BOARD HEARING PROCEDURES; APPLICATION.

(a) The definitions in Article 7, Regulation 5070 shall apply to this Article, and Board hearings on petitions filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7, commencing with Regulation 5070.

(b) The provisions of this Article shall apply to property tax welfare exemption clearance certificate claims received by the Board pursuant to Section 254.6 of the Revenue and Taxation Code.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 254.6 and 270, Revenue and Taxation Code.

History: 1. New article 6 and section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending article heading and section filed 3-19-98.
3. Amended 10-19-04, effective 2-3-05.

5061. SUPPLEMENTARY MATERIAL; APPLICATION FOR ADDITIONAL TIME TO SUBMIT SUPPLEMENTARY MATERIAL.

(a) Where, after analysis of a claim, Board Staff determines that the requirements of Section 214 and following sections of the Revenue and Taxation Code have not been met one of the following reasons will be indicated on the Board's clearance certificate finding sheet to the claimant:

- (1) Religious Aspect Not Apparent (Coded - R.N.A.)
- (2) Hospital Aspect Not Apparent (Coded - H.N.A.)
- (3) Scientific Aspect Not Apparent (Coded - S.N.A.)
- (4) Charitable Aspect Not Apparent (Coded - C.N.A.)
- (5) Management Authority of Nonprofit Managing General Partner Not Apparent (Coded - M.G.P.)

A preliminary notice shall accompany the finding sheet sent to the claimant informing the claimant that it has 30 days from the date of the notice to submit supplementary material supporting the claim.

(b) Upon written application filed within the noticed time limit, the claimant shall be granted an additional 30 days to submit the material.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 214, 214.01, 214.02, 214.05, 214.1, 214.2, 214.3, 214.4, 214.5, 214.6, 214.7, 214.8, 214.9, 214.10, 214.11, 214.13, 214.14, 254.6 and 270, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending subsection (a) and Note filed 3-19-98.
3. Amended 10-19-04, effective 2-3-05.

5062. PETITION TIME LIMIT.

Upon receipt of supplementary material, the Board staff shall conduct a complete review of the claim. A final notice informing the claimant that the supplementary material provides or does not provide a basis

for changing the original finding shall be issued. A no-change notice shall advise the claimant that it has 60 days from the date of the notice to petition the Board for hearing on the claim.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 254.6 and 270, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending section filed 3-19-98.
3. Amended 10-19-04, effective 2-3-05.

5063. HEARING PETITION: CONTENTS.

(a) The petition for hearing shall be in writing and addressed to the Chief of Board Proceedings. It shall state all of the grounds upon which qualification is claimed, and shall include all documents the petitioner wishes the Board to consider in deciding the petition. The parties to the hearing or proceeding shall be the Board Staff and the petitioner. The parties may agree in writing to submit the matter to the Board for a decision without a hearing. The petition shall indicate whether an oral hearing is desired, and if so, petitioner's estimate of the time necessary therefor. If requested in the petition, the Board shall grant a hearing and hear the matter. The petition shall be signed by an authorized representative of the petitioner and shall be mailed to the Chief of Board Proceedings of the State Board of Equalization at Sacramento, California, or shall be deposited personally at the Board's headquarters office in Sacramento. The Chief of Board Proceedings may require the representative to demonstrate the representative's authority to represent the petitioner.

(b) No later than 30 days after the date that the petition for hearing is received pursuant to subdivision (a), the Board Attorney assigned to the case shall schedule a meeting or telephone conference, at a time suitable for the petitioner, for the purpose of establishing the agreed upon and contested facts and the legal issues under consideration.

(c) The Board Staff shall submit an analysis of the petition, related documents and a staff recommendation for Board Action no later than 30 days prior to the date set for hearing or other action on the petition. The analysis and recommendation shall be submitted to the Chief of Board Proceedings and a copy shall be sent to the petitioner.

(d) The petitioner may file a written response to the staff analysis and recommendation no later than 15 days before the date set for hearing or other action on the petition. The response shall be submitted to the Chief of Board Proceedings.

(e) The provisions of subdivisions (b) of Regulation 5075 shall apply to materials submitted pursuant to (a), (c) or (d) of this regulation.

(f) The Board Staff shall also prepare a summary for Board hearing, which shall be a neutral statement of the relevant facts, the issues, and the positions of the Legal Department and the petitioner. The summary for Board hearing shall not be written by any staff person or persons who reviewed the claim and determined it should be denied, or who participated in the preparation of the staff analysis and recommendation.

(g) The Board Proceedings Division shall distribute the petition and related documents, the staff analysis and recommendation, the petitioner's response, if any, and the summary for Board hearing to the Board, the petitioner and the staff at the time agenda materials are distributed for the Board meeting at which the petition is to be considered.

(h) The Chief of Board Proceedings, upon a showing of reasonable cause, may grant a reasonable extension of time for filing materials under (c) or (d) above. The request for an extension of time shall be submitted in writing before the scheduled due date of any materials.

(i) The petition and related documents, the staff analysis and recommendation and related documents, and the petitioner's response to the staff analysis and recommendation shall be the only documents accepted for filing and distribution prior to a scheduled hearing. The Board Proceedings Division shall return any other documents received to the person submitting the documents.

(j) The provisions of Regulation 5081.2 shall apply regarding the Board's issuance of written findings and decision.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 254.6 and 270, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment adding subsection (a) designator, amending newly designated subsection (a), and adding new subsections (b)-(h) 11-19-97; effective 4-8-98.
3. New subsection (b), subsection relettering, and amendment of newly designated subsections (e) and (h) 3-8-01; effective 7-6-01.
4. Amended 10-19-04, effective 2-3-05.

5064. ORAL HEARINGS; WAIVER.

The Board shall schedule an oral hearing on a property tax welfare exemption clearance certificate petition. The petitioner shall receive 60 days notice of the hearing date and time, and the procedures shall be governed by Article 7. Oral hearing may be waived by the taxpayer and the matter submitted for decision on the basis of the written petition.

Note: Authority: Section 15606(a), Government Code.

Reference: Section 254.6, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Amendment of section 7-29-99; effective 10-31-99.
3. Amended 10-19-04, effective 2-3-05.

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ARTICLE 7. GENERAL BOARD HEARING PROCEDURES

5070. DEFINITIONS.

The following definitions apply to this chapter:

- (a) "Appeals Staff," "Appeals Attorney" or "Appeals Auditor" means an employee of the Board of Equalization assigned to the Appeals Division of the Legal Department.
- (b) "Board" means the members of the State Board of Equalization meeting as a body.
- (c) "Board Staff" or "Board Attorney" means an employee of the Board of Equalization charged with a responsibility under this Chapter or appearing before the Board in any proceeding.
- (d) "Brief" means a written document that includes discussion of, or citations to, laws or regulations or an argument of how the laws or regulations apply to the facts supporting the party's position. Notwithstanding this definition, affidavits or declarations submitted by the parties and documents produced by the Appeals Division, including, but not limited to, a Hearing Summary or Final Action Recommendation, are not briefs.
- (e) "Delivery Service" means any delivery service provided by a trade or business if such service is available to the general public and records electronically to its data base, kept in the regular course of its business, or marks on the cover in which any item is delivered, the date on which such item was given to the trade or business for delivery.
- (f) "Department" means the Property and Special Taxes Department, Sales and Use Tax Department, Energy Commission, Department of Fish and Game, Franchise Tax Board, Department of Health Services, Department of Insurance, Integrated Waste Management Board, Public Utilities Commission, Department of Toxic Substances Control and Water Resources Control Board.
- (g) "Party" means the taxpayer and the taxpayer's representative; and the Department as defined in this section. In local tax reallocation and district tax redistribution appeals, the term "party" means those persons defined as parties in Regulation 1807 or 1828.
- (h) "Petition" means any petition, including a petition for redetermination; claim, including a claim for refund; appeal from an action of the Franchise Tax Board on a claim for refund, deficiency assessment, or jeopardy assessment; request for administrative hearing; petition for rehearing; petition for reconsideration of successor liability; petition for review of local tax reallocation inquires; petition for review of district tax redistribution inquires; and any other matter for administrative decision or adjudication by the Board in any program listed in Regulation 5071. Any correspondence from a taxpayer directed to Board Staff, mailed within 30 days after the notice of determination has been issued, that includes a statement that the taxpayer (1) disagrees with an assessment and/or determination or (2) requests a hearing, shall be accepted as a petition for redetermination. Staff shall indicate to the taxpayer any specific deficiencies in the petition and offer the taxpayer a reasonable period of time to perfect the petition.
- (i) "Tax" means any tax, fee, surcharge, assessment, assessment review, or exemption program administered by the Board.
- (j) "Taxpayer" means a taxpayer, feepayer, surcharge payer, appellant, petitioner, claimant, or any other person who has a liability, assessment, or other matter for Board hearing or who is a person directly interested in any matter before the Board under any of the programs listed in Regulation 5071. A taxpayer is not a party to a local tax reallocation or district tax redistribution appeal except as provided in Regulation 1807 or 1828.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7209, 7270, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19335, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New article 7 and section adopted 8-31-95; effective 1-1-96.
2. Amendment of subsections (a)-(c), (e) and (g), new subsections (h) and (i), and amendment of Note 11-19-97; effective 4-8-98.
3. Amendment of section and Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Amendment of section and Note 5-25-04; effective 8-25-04.

5071. GENERAL.

(a) This article applies to Board hearings under any of the following programs:

Administration of Franchise and Income Tax Laws
Revenue and Taxation Code Sections 18401-19802

Alcoholic Beverage Tax
California Constitution Article XX, Section 22;
Revenue and Taxation Code Sections 32001-34557

California Tire Fee
Public Resources Code Sections 42860-42895;
Revenue and Taxation Code Sections 55001-55381

Childhood Lead Poisoning Prevention Fee
Health and Safety Code Section 105310;
Revenue and Taxation Code Sections 43001-43651

Cigarette and Tobacco Products Tax
California Constitution Article XIII B; Section 12
Revenue and Taxation Code Sections 30001-30481

Diesel Fuel Tax
Revenue and Taxation Code Sections 60001-60709

Emergency Telephone Users Surcharge
Revenue and Taxation Code Sections 41001-41176

Energy Resources Surcharge
Revenue and Taxation Code Sections 40001-40216

Hazardous Substances Tax
Revenue and Taxation Code Sections 43001-43651

Insurance Tax
California Constitution Article XIII, Section 28;
Revenue and Taxation Code Sections 12001-13170

Integrated Waste Management Fee
Revenue and Taxation Code Sections 45001-45984

Marine Invasive Species Fee Collection Law
Public Resources Code Sections 71200-71271;
Revenue and Taxation Code Sections 44000-44008, 55001-55381

Motor Vehicle Fuel Tax
 California Constitution Article XIX, Sections 1-9;
 Revenue and Taxation Code Sections 7301-8526

Natural Gas Surcharge
 Public Utilities Code Sections 890-900;
 Revenue and Taxation Code Sections 55001-55381

Occupational Lead Poisoning Prevention Fee
 Health and Safety Code Section 105190;
 Revenue and Taxation Code Sections 43001-43651

Oil Spill Response, Prevention, and Administration Fees
 Revenue and Taxation Code Sections 46001-46751

Private Railroad Car Tax
 California Constitution Article XIII, Section 19;
 Revenue and Taxation Code Sections 11201-11702

Publicly Owned Property
 California Constitution Article XIII, Section 11(g);
 Revenue and Taxation Code Sections 1840 and 1841

Sales and Use Tax
 (including State-administered local sales, transactions, and use taxes)
 Revenue and Taxation Code Sections 6001-7279.6

Senior Citizens Homeowners and Renters Property Tax Assistance
 Revenue and Taxation Code Sections 20501-20646

State-Assessed Property
 California Constitution Article XIII, Section 19;
 Revenue and Taxation Code Sections 721-868, 4876-4880, 5011-5014

Timber Yield Tax
 Revenue and Taxation Code Sections 423.5, 431-437, 38101-38908

Underground Storage Tank Maintenance Fee
 Revenue and Taxation Code Sections 50101-50162

Use Fuel Tax
 Revenue and Taxation Code Sections 8601-9355

Welfare Exemption
 California Constitution Article XIII, Section 4(b);
 Revenue and Taxation Code Sections 214-214.14, 254.5, 270-272

(b) This article sets forth rules of general application that apply to hearings before the Board in all of the programs listed above. Where the procedure for a specific program differs from the general rule, the specific program and procedure are described in a subdivision of the general rule. In addition, prior articles include regulations that address specific procedures for appeals from the Franchise Tax Board (Article 1), Business Taxes and Timber Yield Tax (Article 2), Hearings on Jeopardy Determinations (Article 3), State Assesseees and Private Railroad Car Companies (Article 4), Taxable Property of a County, City, or Municipal Corporation (Article 5), and Property Tax Welfare Exemptions (Article 6).

(c) To the extent that regulations in this Article are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 41071, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section and Note 11-19-97; effective 4-8-98.
3. Amendment of subsections (a) and (b), new subsection (c) and amendment of Note 7-29-99; effective 10-31-99.
4. Amendment of subsection (a) and Note 3-8-01; effective 7-6-01.
5. Amendment of subsections (a) and (b) and Note 5-25-04; effective 8-25-04.

5072. Quorum.

Except as otherwise provided in this Chapter, any three members of the Board present at a meeting shall constitute a quorum. When a member is disqualified from participating in a decision under the provisions of the contribution disclosure statute (Government Code Section 15626), or the conflict of interest provisions of the Political Reform Act (Government Code Sections 81000, et seq.) the member may not be counted for a quorum. If a deputy of the State Controller is not authorized by Section 7.9 of the Government Code to participate because the matter before the Board is a Constitutional matter, the deputy of the State Controller may not be counted for a quorum.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending section and Note filed 3-19-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Change without regulatory effect amending Note filed 7-26-04.

5073. REPRESENTATION AT HEARINGS AND POWERS OF ATTORNEY.

(a) Taxpayers may be represented at all levels of review by any person of the taxpayer's choosing, including, but not limited to an attorney, appraiser, accountant, bookkeeper, employee or business associate.

(b) Except as provided in subsection (c) below, the Board shall recognize all representatives who are identified in writing or orally by the taxpayer, and all those who advise the Board in writing that they represent the taxpayer. Recognized representatives shall be permitted to receive confidential information relating to the taxpayer they represent, and to perform on behalf of the taxpayer all acts that the taxpayer may perform with respect to the review of the matter.

(c) The Board, or Board Staff, may require a party to complete a Power of Attorney on a form provided by the Board. Such Power of Attorney shall be a standard form adopted in conjunction with the Franchise Tax Board to be used in either Board of Equalization or Franchise Tax Board matters.

(d) The Power of Attorney form shall include the following information: taxpayer's name, telephone number, taxpayer identification number(s), account or permit number(s) and mailing address; the name, address, and telephone and FAX number of the appointed representative(s); the tax matters in which the representative is authorized to represent the taxpayer; the extent of the representative's authority; the tax period(s) for which the authorization is granted; a statement that the Power of Attorney revokes all prior Powers of Attorney with any exceptions to the revocation; the time period during which the Power of Attorney shall be in effect; the signature(s) and title of all affected taxpayers and the date of signature.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of subsections (b)-(d) and amendment of Note 11-19-97; effective 4-8-98.
3. Amendment of subsection (d) and Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amendment Note filed 6-11-01.
5. Amended 1-25-05; effective 4-29-05.

5074. CONSOLIDATION FOR HEARING OR DECISION.

Upon the request of the Board or the Board Staff or any party, any matters pending before the Board may, at the discretion of the Board or the Board Staff, be consolidated for hearing or decision if the Board finds that the facts and issues are similar and no substantial right of any party will be prejudiced.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section and Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Change without regulatory effect amending Note filed 7-26-04.

5074.5. TIMELINESS OF DOCUMENTS.

A document shall be timely if it is mailed to or received at the headquarters office of the Board within the time specified by the particular statute or regulation under which the document is filed. In the absence of other evidence, the post-mark date or the date of delivery to a delivery service, as defined in Article 7, Regulation 5070, shall be considered the mailing date. If the last day for mailing or delivering the document falls on a Saturday, Sunday or holiday, the time shall be extended to the next business day.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 7-29-99; effective 10-31-99.
2. Change without regulatory effect amending Note filed 6-11-01.
3. Change without regulatory effect amending Note filed 7-26-04.

5075. BRIEFS.

(a) Briefs are required in appeals of decisions of the Franchise Tax Board and are optional in all business taxes matters before the Board. This regulation applies to all briefs filed with the Board, except that the briefing schedule of Regulation 5075.1 shall apply to appeals from actions of the Franchise Tax Board and the schedule in subdivisions (e) through (h) of Regulation 5041 shall apply to the filings required by

Regulation 5041. In property tax matters, the petition, the staff analysis, the petitioner's response to the staff analysis, and, where appropriate, a non-party brief submitted pursuant to subdivision (h), are briefs within the meaning of this regulation, and only these documents will be accepted for filing and distribution; however, where circumstances warrant, the Board may request that additional briefs be filed, and will set the briefing schedule. Except in those circumstances, additional briefs are not accepted in property tax matters.

(b) General. Any brief filed with the Board shall be filed within the time required by these regulations or, if no time is so specified, as directed by the Board or the Chief of Board Proceedings. All briefs shall be addressed and mailed to the Chief of Board Proceedings, at the headquarters office of the State Board of Equalization at Sacramento, or deposited personally at the headquarters office of the Board in Sacramento. In addition, except as otherwise provided in the Rules of Practice, all briefs shall be mailed or personally delivered to the other parties. Excluding the Table of Contents and exhibits, no brief shall exceed 30 typed or handwritten, double-spaced, or 15 typed or handwritten, single-spaced, 8 1/2" by 11" pages, printed only on one side in a type-font size of at least 10 points or 12 characters per inch (CPI), or the equivalent, excluding exhibits. Exceptions to the 30-page limit may be granted prior to the deadline for filing the brief by the Chief of Board Proceedings, upon written application that establishes reasonable circumstances that justify the necessity for additional pages. In the event the brief does not conform to the form and page limit specified above, the Board Proceedings Division may return the submitted brief. The party shall be given 10 days to comply with the form and page limit. Failure to comply within 10 days shall constitute a waiver of the opportunity to submit the brief.

(c) Opening Briefs. Any party may file an opening brief. An opening brief shall contain, along with any other information required by these regulations, a statement of the issue(s), a statement of the facts, and a discussion of the legal authorities, including statutes and regulations, relied on by the party submitting the opening brief. Opening briefs shall be filed with the Chief of Board Proceedings no later than 45 days before the Board hearing.

(d) Reply Briefs. A reply brief is a brief that is filed by any party in response to any opening brief and shall contain a statement of the issue(s), including relevant issues not raised by the opening brief, a statement of the facts as understood by the party submitting the reply brief, a discussion of the legal authorities, including relevant statutes and regulations, relied on by the party submitting the reply brief, and presentation of any affirmative defenses. Reply briefs shall be filed with the Chief of Board Proceedings no later than 30 days before the Board hearing.

(e) Briefs Filed by Unrepresented Taxpayer. A taxpayer who appears at a Board hearing without a representative, and who has not employed a representative to prepare a brief, may, at the discretion of the Board, submit a brief on the day of the hearing.

(f) Post-Hearing Briefs. The Board may permit the filing of post-hearing briefs and memoranda of legal authorities, including relevant statutes and regulations, on any matters considered at a hearing. However, any post-hearing brief shall only be permitted by order of the Board at the conclusion of a hearing, on the subject matter specified and within the time limits prescribed by the Board.

(g) Extensions Of Time. A reasonable extension of time for the filing of briefs may be granted by the Chief of Board Proceedings, upon a showing of extreme hardship. The request for an extension of time shall be submitted in writing before the scheduled due date of any brief.

(h) Non-Party (Amicus) Briefs. A pre-hearing brief or letter from a non-party shall be filed with the Chief of Board Proceedings no later than 30 days before the Board hearing, and the parties may file responses with the Chief of Board Proceedings no later than 15 days before the hearing. The response by the party shall address only the points of disagreement the party has with the non-party brief or letter. A non-party post-hearing brief or letter may be filed only if the Board has requested post-hearing briefing from the parties and no later than the end of the post-hearing briefing period prescribed by the Board for the parties. A non-party brief shall conform to the general requirements set forth in (b) above. A non-party brief or letter shall contain a statement regarding the nature of the non-party's interest in the outcome of the proceeding.

(i) Additional Briefing. In extraordinary situations, the Board or the Board Staff may request additional briefing from either party after the briefing period is ordinarily complete. Any such requested brief shall be filed within the time specified by the Board or Board Staff.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of subsections (a) - (d), new subsections (e), (h) and (i); subsection relettering and amendment of Note 11-19-97; effective 4-8-98.
3. Amendment of subsections (b) and (c) and amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Amendment of section and Note 5-25-04; effective 8-25-04.

5075.1. APPEALS FROM ACTIONS OF THE FRANCHISE TAX BOARD: BRIEFING SCHEDULE.

(a) Appeals From Actions Of The Franchise Tax Board: General; Non-party (Amicus) Briefs. In all appeals from actions of the Franchise Tax Board, other than appeals contesting a finding of jeopardy status, the parties shall adhere to the following schedules and procedures for filing briefs. In jeopardy status appeals, the Board Proceedings Division shall notify the parties of the schedule and procedure for filing briefs. Non-party (Amicus) briefs or letters may be filed up to and until the time that the briefing period, established pursuant to this Rule, for both the taxpayer and the Franchise Tax Board has ended. Either party may file a response to the non-party brief or letter no later than 30 days prior to the hearing. The response by the party shall address only the points of disagreement the party has with the non-party brief or letter. The response shall not extend the briefing period.

(b) Appeals From Actions Of The Franchise Tax Board: Opening And Reply Briefs.

(1) If the appeal is filed within the statutory period but is incomplete, the taxpayer shall be granted 90 days from the date of the acknowledgment letter from the Board Proceedings Division within which to perfect the appeal by submitting information requested in the letter from the Board Proceedings Division. Two copies of all submissions shall be mailed to the Board Proceedings Division, who will forward one copy to the Franchise Tax Board. The Chief of Board Proceedings may dismiss the incomplete appeal if it is not perfected within the 90-day period.

(2) After an appeal is perfected, the Board Proceedings Division will mail a notification letter to all parties of the taxpayer's perfected appeal. Except as provided in subdivision (b)(3), the Franchise Tax Board shall be allowed 90 days from the date of the notification letter in which to file a reply brief. The Franchise Tax Board shall mail a copy of the reply brief to the taxpayer.

(3) For Senior Citizens Homeowners and Renters Property Tax Assistance appeals, after an appeal is perfected, the Franchise Tax Board shall be allowed 60 days from the date of the notification letter in which to file the reply brief. The Franchise Tax Board shall mail a copy of the reply brief to the taxpayer.

(c) Appeals From Actions Of The Franchise Tax Board: Supplemental Briefs.

(1) The taxpayer may file a supplemental brief, addressing only the points of disagreement the taxpayer has with the Franchise Tax Board's reply brief, within 30 days from the date of the Board's letter acknowledging receipt of the Franchise Tax Board's reply brief. The taxpayer shall mail two copies of the supplemental brief to the Board Proceedings Division, who will forward one copy to the Franchise Tax Board. This brief shall ordinarily complete the briefing.

(2) In extraordinary circumstances, the Franchise Tax Board may be permitted to file a supplemental brief, addressing only the points of disagreement the Franchise Tax Board has with the taxpayer's supplemental brief, but only pursuant to previous written permission from Board Staff. Any such permissive supplemental briefs shall be filed within 30 days after receipt of permission to file. If the

Franchise Tax Board is allowed to file a supplemental brief, the taxpayer shall have 30 days after receipt of the brief is acknowledged by the Board to file a response. This response shall then complete the briefing.

(d) Appeals From Actions Of The Franchise Tax Board: Extensions Of Time. At the discretion of the Chief of Board Proceedings, extensions of time for the filing of briefs may be granted upon a showing of extreme hardship or when the parties agree in writing to an extension of time and the request or agreement is filed with the Board Proceedings Division before the scheduled due date of any brief.

(e) Additional Briefing or Evidence. If the Board or Board Staff, in either's discretion, determines that insufficient briefing or evidence has been provided, the Board or Board Staff may request additional briefing or evidence from either party. A request for additional briefing or evidence may be made during the briefing period or after the briefing period is ordinarily complete. Any such requested briefs or evidence shall be submitted within the time specified by the Board or Board Staff. If Board Staff requests additional briefing from the Franchise Tax Board, the taxpayer shall have 30 days after receipt of the brief is acknowledged by Board Staff to file a final response.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections, 19045, 19046, 19047, 19048, 19072, 19084, 19085, 19087, 19331, 19332, 19333, 19334, 19345, 19346 and 20645, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.

2. Amendment of subsections (b)(1)-(2), (c)(2) and (d)(1)-(2), new subsection (e) and amendment of Note 11-19-97; effective 4-8-98.

3. Amendment of subsection (e) 3-8-01; effective 7-6-01.

4. Amendment of section and Note 5-25-04; effective 8-25-04.

5076. NOTICE OF BOARD HEARING; WAIVER OR POSTPONEMENT OF HEARING; FAILURE TO RESPOND TO HEARING NOTICE OR TO APPEAR FOR HEARING; PLACE OF HEARING

(a) This regulation applies to all Board hearings, except that the more specific provisions of Regulation 5076.1 apply to appeals from actions of the Franchise Tax Board.

(b) Notice of Board Hearing and Waiver—General Procedure. Board Proceedings staff shall send notice of the Board hearing to the taxpayer and the Department at least 60 days in advance of the hearing date, giving the parties 15 days to respond to the hearing notice. The 60-day notice period may be waived upon agreement among the parties and the Chief of Board Proceedings. If the 60-day notice period is waived, the Chief of Board Proceedings shall modify the briefing schedule set forth in Regulation 5075. The taxpayer shall respond to the hearing notice by indicating: that the taxpayer will appear at the time and place noted; or, that the taxpayer waives oral hearing and requests that the case be submitted to the Board for decision without oral hearing and based upon the written record; or, that the taxpayer requests that the hearing be postponed, stating the reason the postponement is requested.

(c) Notice of Board Hearing and Waiver—State Assessee and Private Railroad Cars Matters. Board staff shall send notice of the Board hearing to the taxpayer and the department at least 45 days in advance of the hearing date, giving the parties 15 days to respond to the hearing notice. The 45-day notice period may be waived upon agreement among the parties and the Chief of Board Proceedings. If the 45-day notice period is waived, the Chief of Board Proceedings shall modify the briefing schedule set forth in Regulation 5041. The taxpayer shall respond to the hearing notice by indicating: (1) that the taxpayer will appear at the time and place noted; or (2) that the taxpayer waives oral hearing and requests that the case be submitted to the Board for decision without oral hearing and based upon the written record; or (3) that the taxpayer requests that the hearing be postponed, stating the reason the postponement is requested.

(d) Postponement Of Board Hearing. The Chief of Board Proceedings may grant one postponement of a hearing upon agreement of the parties if the request for postponement is made by the deadline stated in the hearing notice, provides sufficient justification for the postponement, and if the parties commit to a specific subsequent hearing date. The Chief of Board Proceedings may grant a postponement requested

after response to the hearing notice upon agreement of the parties and a showing of extreme hardship. A postponement of a hearing may also be granted at the discretion of the Board.

(e) **Removal From Calendar.** The Chief of Board Proceedings may remove hearings or related proceedings from the hearing calendar upon a showing of reasonable cause.

(f) **Failure To Respond Or Appear.** If the taxpayer fails to respond to the hearing notice by the deadline stated in the notice, or responds to the hearing notice but fails to appear for the hearing on the date and time stated in the notice, the case shall be submitted to the Board for decision without oral hearing and on the basis of the written record. At the discretion of the Chief of Board Proceedings, exceptions may be made upon a showing of extreme hardship.

(g) **Place of Hearing.** Except for a hearing on a property tax petition, a hearing involving a taxpayer or taxpayer's representative residing in the Southern part of the State shall ordinarily be held in the Los Angeles area. Other hearings and hearings on property tax petitions shall ordinarily be held in Sacramento. At its discretion, the Board may hold hearings at other locations.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section and Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Amended 1-25-05; effective 4-29-05.

5076.1. APPEALS FROM ACTIONS OF THE FRANCHISE TAX BOARD: VOLUNTARY DISMISSAL; NEGOTIATIONS; DEFERRALS; SUBMISSION FOR DECISION; ORAL HEARINGS.

(a) **Appeals From Actions Of The Franchise Tax Board: Voluntary Dismissal; Negotiations.** At any time, the Chief of Board Proceedings may dismiss an appeal from an action by the Franchise Tax Board at the written request of the taxpayer, at the request of the Franchise Tax Board when it concedes the deficiency or the refund, or on the basis of a written stipulation between the taxpayer and the Franchise Tax Board. At any time prior to a final decision by the Board, the taxpayer and the Franchise Tax Board may enter into negotiations for settlement of an appeal.

(b) **Appeals From Actions Of The Franchise Tax Board: Deferrals.** The Board Proceedings Division may defer hearings or related proceedings, including briefing, for an indefinite period upon the filing of a written stipulation between the taxpayer and the Franchise Tax Board, or, upon a showing of reasonable cause, for a specified period. The Board Proceedings Division shall notify the parties whether a deferral has been granted.

(c) **Appeals From Actions Of The Franchise Tax Board: Submission For Decision; Oral Hearings.** After all briefs have been filed in a Franchise Tax Board matter, the appeal shall be submitted for decision on the basis of the written record unless the taxpayer requests an oral hearing.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346 and 20645, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of subsection (b) 11-19-97; effective 4-8-98.
3. Amendment of subsection (a) 3-8-01; effective 7-6-01.
4. Amendment of subsections (a) and (b) and Note 5-25-04; effective 8-25-04.

5077. ALLOCATION OF HEARING TIME.

The Chief of Board Proceedings shall allocate hearing time for each party, including response time, and reserve time for questions by the Board. Before the hearing, the Chief of Board Proceedings shall inform the parties and the Board in writing of the allocations. At the hearing, the Chief of Board Proceedings shall announce the hearing time allocations and inform the Board Chair when each of the allocations has elapsed.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section and Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Change without regulatory effect amending section and Note filed 7-26-04.

5078. SCOPE OF HEARING.

(a) An oral hearing shall be limited to consideration of the issues, values, or precise elements set forth in the petition, except that the Board may inquire into relevant new matters and afford the parties an opportunity to respond.

(b) Except in the case of appeals from actions of the Franchise Tax Board and hearings on publicly owned property, hearings before the Board under the applicable statutory provisions are not in the nature of trials or contests between adverse parties. They are meetings of the Board at which the taxpayer presents orally to the Board the taxpayer's arguments for a reduction or cancellation of a tax liability, a refund of tax previously paid, or a reduction in assessed value, or other relief.

Note: Authority Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Repealer of subsection (c) and amendment of Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Change without regulatory effect amending Note filed 7-26-04.

5079. HEARING PROCEDURE: ORDER OF PRESENTATION; WITNESSES; PRESENTATION OF EVIDENCE; STIPULATION OF FACTS; OFFICIAL NOTICE; CONCLUSION OF HEARING.

(a) Except as to more specific requirements set forth in other regulations of these Rules of Practice, this regulation applies to all Board hearings.

(b) Order of Presentation. The hearing shall ordinarily proceed in the following manner. A member of the Board Staff shall report on the record whether campaign contribution disclosure statements have been filed in accordance with the requirements of Title 18, Division 2.2, Regulation 7011, and whether any disqualifying contributions have been reported. A Board Attorney shall summarize by oral statement the issues of each case. Taxpayers shall then state their position, and present evidence as they see fit,

including by means of visual aids, subject to rulings by the Board Chair. The Department shall thereafter state its position and present its evidence. Taxpayers shall then be given an opportunity to reply.

(c) Witnesses.

(1) The taxpayer and the Department may offer witnesses to testify. The Board encourages the parties to provide the Board Proceedings Division with the name and address of any witness who is going to testify and a brief description of the purpose of their testimony, in advance of the hearing. In addition, the Board Chair may, at the Board Chair's discretion or upon the request of a party, direct witnesses to testify under oath or affirmation. Each party may cross-examine opposing witnesses.

(2) Board Staff may, upon recognition by the Board Chair, question the parties, cross-examine persons called as witnesses, and explain Board Staff's view as to the validity of any argument made, the value of evidence submitted, and any other relevant matter.

(d) Presentation of Evidence. Any relevant evidence, including affidavits, declarations under penalty of perjury, and hearsay evidence, may be presented if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Each party shall be permitted to comment on or respond to any affidavits or declarations submitted.

Items of documentary evidence and citations to judicial decisions issued after the briefing period has ended, and an analysis, discussion or arguments concerning the relevance of the evidence or decision, may be submitted to the Chief of Board Proceedings at any time prior to or at the hearing on the matter, or at any time prior to the matter being submitted for decision if no hearing is held on the matter. The Chief of Board Proceedings, will send a copy of the evidence or citations and any analysis, discussion or arguments concerning the relevance of the evidence or decision to the members of the Board and to the other party. The Board or Board Staff will permit the other party an opportunity to submit a response that shall be limited to points of disagreement with the analysis, discussion or arguments.

The Board shall be liberal in allowing the presentation of evidence, but objections to the presentation of and comments on the weaknesses of evidence shall be considered in assigning weight to the evidence. The Board may refuse to allow the presentation of evidence that it considers irrelevant, untrustworthy or unduly repetitious.

(e) Submission of Exhibits into Evidence. Any materials presented by any party which have been marked as exhibits during the matter and which the party elects to be entered into the record must be moved into evidence. The Chair will ask the parties if the exhibits are to be submitted. A party must make a motion to move the exhibits into evidence. If there are no objections, the exhibit will be entered into evidence and made a part of the record of the pending matter. If any member or party objects to the admission of evidence, the question shall be discussed and voted upon by the Board.

(f) Stipulation of Facts. The taxpayer and the Department may file, at any time prior to submission of the case for decision, a stipulation of the facts upon which they agree, the facts that are in dispute, and the reasons for the dispute. The Board or Board Staff may require the parties to file such a stipulation.

(g) Official Notice. The Board may take official notice of:

(1) the records maintained by the Board;

(2) tax returns filed with the Franchise Tax Board for or on behalf of the taxpayer or an affiliated company, together with related records on file with the Franchise Tax Board;

(3) any fact which may be judicially noticed by the courts of this State. The parties may, at the hearing or through a petition for rehearing, request permission to refute any matter thus noticed.

(h) Conclusion of Hearing. That portion of the hearing in which evidence and argument are presented to the Board shall be concluded: upon a vote of the Board Members to conclude that portion of the hearing; by a declaration of the Board Chair that such portion of the hearing is concluded if there is no challenge to the Chair; or upon the making of a motion and a second that any action be taken on the matter.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section and Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Amendment of subsections (c),(d) and (f) and amendment of Note 3-8-01; effective 7-6-01.
5. Amendment of subsections (a), (c), and (d),and Note 5-25-04; effective 8-25-04.

5080. BURDEN OF PROOF.

(a) Except as otherwise specifically provided by statute or in these regulations, the burden of proof shall ordinarily be upon the taxpayer as to all issues of fact.

(b) In any proceeding involving the issue of fraud with intent to evade tax, the burden of proof as to that issue shall be upon the Department.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending Note filed 3-19-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Change without regulatory effect adding subsection (a) and (b) designators and amending Note filed 7-26-04.

5081. DECISION AND VOTING PROCEDURE: MAJORITY VOTE REQUIREMENT; VOTING.

(a) General. After the hearing, the Board may decide the matter, take it under consideration and decide it later at the same meeting or at a subsequent meeting, or continue the hearing to a later date.

(b) Majority Vote Requirement. A majority vote of the quorum is required for all decisions or actions of the Board. If there is no objection by a Board Member, a matter may be decided by unanimous consent.

(c) Voting.

(1) To call for a vote, a motion setting forth the proposed decision or action of the Board shall be made by one Board Member and seconded by another. A motion calling for a vote on a matter noticed on the Board's agenda shall not be made until after the matter has been presented to, or, in the case of a closed session matter, discussed by, the Board at the meeting.

(2) Once the roll call for the vote has begun, the discussion of a motion shall end, the roll shall be called, and the motion shall be passed or defeated at that time unless one or more Board Members are absent and the voting Members are tied, in which case the Chairman may leave the roll open until the conclusion of the Board meeting in order to allow the absent Member or Members to be present and vote.

(3) Except as provided in subdivision (c) (2), in order to cast a vote, a Board Member, or, when authorized by statute, the deputy of the State Controller, shall be personally present at the time the roll for the vote is called.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7262, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 742, 1840, 4877, 6562, 7711, 8852, 11340, 12429, 19047, 19048, 19072, 19084, 19085, 19087, 19333, 19334, 19345, 19346, 20645, 30262, 32302, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083 and 60352, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section heading, repealer of subsections (a) and (e); subsection relettering and amendment of Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Amendment of subsections (c) and (c)(2) and amendment of Note 3-8-01; effective 7-6-01.
5. Change without regulatory effect amending Note filed 7-26-04.

5081.2. NOTICE OF BOARD DECISION; FINDINGS.

- (a) Notification of Decision. All parties to a proceeding shall be notified in writing of the Board's decision.
- (b) Except as provided in subdivision (c), if requested in a Property Tax petition, written findings and decision shall be rendered and sent to the petitioner.
- (c) When the review, equalization and adjustment of the taxable property of a County, City, or Municipal corporation are completed, Board Staff shall mail to the assessor, the governing body and the auditor of the taxing agency, and the taxpayer a copy of the Board's findings and decision with respect to the assessment.
- (d) Whether or not a Welfare Exemption hearing has been granted, a written notice of the decision shall be sent to the taxpayer and to the assessor concerned.

Note: Authority: Section 15606(a), Government Code; Section 11651, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 744, 1841, 11341 and 38445, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section heading; new subsection (a); subsection relettering and amendment to Note 11-19-97; effective 4-8-98.
3. Amendment of subsections (b) and (c) 3-8-01; effective 7-6-01.

5082. FINALITY OF DECISION; PETITION FOR REHEARING.

(a) Except as provided in Regulation 5082.1 for appeals from actions of the Franchise Tax Board and in Regulation 5082.2 for Property Tax petitions, the decision is final 30 days from the date the official notice of Board action is mailed unless a petition for rehearing is filed pursuant to this regulation. If a petition for rehearing is timely filed, the decision is final either: (1) 30 days after the mailing of the official notice of Board action that reflects the Board's denial of the petition for rehearing; or (2) if the Board grants a rehearing, 30 days after the mailing of the official notice of Board action that reflects the Board's decision on the rehearing. Each party may file only one petition for rehearing.

(b) A petition for rehearing shall clearly state the legal and/or factual basis for the request. Reasons for requesting a rehearing include arguments that the Board made an error of law reaching its decision or that there is newly discovered evidence that was unavailable prior to the Board decision. Failure to state the legal and/or factual basis for a rehearing may result in denial of the petition for rehearing.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6562, 6564, 7711, 7712, 8852, 8853, 12429, 12431, 30262, 30263, 32302, 32304, 38443, 38445, 40093, 40095, 41087, 41089, 43303, 43305, 45303, 45305, 46353, 46355, 50116, 50118, 55083, 55085 and 60352, Revenue and Taxation Code.

- History:* 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section and Note 11-19-97; effective 4-8-98.
3. Amendment designating first paragraph as subsection (a), new subsection (b) and amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Change without regulatory effect amending subsection (a) and Note filed 7-26-04.

5082.1. APPEALS FROM ACTIONS OF THE FRANCHISE TAX BOARD: FORMAL WRITTEN OPINION; FINALITY OF DECISION; PETITION FOR REHEARING.

(a) When the Board votes to take a matter under submission and directs that a formal written opinion be drafted, the matter is not decided until the Board votes to adopt the formal opinion or subsequently decides the matter without adopting a formal written opinion.

(b) The Board's decision is final 30 days from the date the Board decides the matter unless a petition for rehearing is filed within that period by either party. A copy of the petition for rehearing shall be mailed to the other party. If a petition for rehearing is filed, the decision is final either: (1) 30 days after the Board denies the petition for rehearing; or (2) if, the Board grants a rehearing, 30 days after the Board decides the matter on rehearing.

(c) A petition for rehearing shall clearly state the legal and/or factual basis for the request. Reasons for requesting a rehearing include arguments that the Board made an error of law reaching its decision or that there is newly discovered evidence that was unavailable prior to the Board decision. Failure to state the legal and/or factual basis for a rehearing may result in denial of the petition for rehearing.

(d) If a petition for rehearing is timely filed, but is incomplete, the filing party shall be granted 30 days from the date of the acknowledgement letter from the Board Proceedings Division to perfect the petition for rehearing.

(e) The opposing party shall be given 30 days from the date of the letter from the Board Proceedings Division acknowledging receipt of a perfected appeal in which to file a reply brief.

Note: Authority: Section 15606(a), Government Code.

Reference: Sections 19048, 19072, 19084, 19087, 19334, 19346 and 20645, Revenue and Taxation Code.

- History:* 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending section filed 3-19-98.
3. Amendment of section heading and section 7-29-99; effective 10-31-99.
4. New subsections (d) and (e) added 5-25-04; effective 8-25-04.

5082.2. PROPERTY TAX PETITIONS: FINALITY OF DECISION; PETITION FOR REHEARING.

(a) Property tax petitions include petitions filed pursuant to Article 4 (State Assesseees and Private Railroad Car Companies), Article 5 (Taxable Property of a County, City, or Municipal Corporation), and Article 6 (Property Tax Welfare Exemptions).

(b) The decision of the Board upon a property tax petition is final. The Board shall not reconsider or rehear a petition. The Board may modify a decision on a petition to correct a clerical error.

Note: Authority: Section 15606(a), Government Code; and Section 11651, Revenue and Taxation Code.

Reference: Sections 254.5, 270, 744, 1841 and 11341, Revenue and Taxation Code.

- History:* 1. New section adopted 8-31-95; effective 1-1-96.
2. Amended 1-25-05; effective 4-29-05.

5083. FEES: FILING, SUBPOENAS, TRANSCRIPTS, AND COPIES.

The Board shall not charge a fee for the filing of any paper or the issuance of a subpoena. Charges for transcripts of testimony heard before the Board shall be made at the rates specified in Section 69950 of the Government Code. Copies, including certified copies, of records that the Board is permitted by law to

divulge shall be furnished to litigants or other interested persons at costs as specified in Section 6253 of the Government Code and Section 1798.33 of the Civil Code.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 6253 and 15613, Government Code; and Section 1798.33, Civil Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Amendment of section heading, section and Note 11-19-97; effective 4-8-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Amendment of section heading, section and Note 5-25-04; effective 8-25-04.

5085. PUBLIC RECORD.

Public meeting agendas, minutes of public meetings of the Board including exhibits incorporated by reference, and documents distributed to Board Members for discussion or consideration at a public meeting are public records and open to public inspection unless exempted from disclosure by state or federal law. Documents exempted from disclosure include, but are not limited to, confidential taxpayer information, and memoranda from Board Legal Staff and the Attorney General to Board Members that are confidential communications between client and lawyer as defined in Section 952 of the Evidence Code.

Note: Authority: Section 15606(a), Government Code; Sections 105190 and 105310, Health and Safety Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 952 and 954, Evidence Code; and Sections 6252, 6253, 6254, 15619, and 15641, Government Code; Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381 and 60609, Revenue and Taxation Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.
2. Change without regulatory effect amending section and Note filed 3-19-98.
3. Amendment of Note 7-29-99; effective 10-31-99.
4. Change without regulatory effect amending Note filed 6-11-01.
5. Change without regulatory effect amending section and Note filed 7-26-04.

5086. SUBPOENAS.

Subpoenas for the attendance of witnesses or the production of books, records, accounts and papers may be issued in accordance with Section 15613 of the Government Code. Except where the subpoena is issued at the request of the Board, a subpoena shall be served on behalf of and at the expense of the person requesting its issuance. An application for a subpoena for the production of books, records, accounts and papers shall be supported by an affidavit as prescribed by Section 1985 of the Code of Civil Procedure. Any affidavit filed in support of an application for a subpoena shall be served with the subpoena.

Note: Authority: Section 15606(a), Government Code.

Reference: Section 15613, Government Code.

History: 1. New section adopted 8-31-95; effective 1-1-96.

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RULES OF PRACTICE of the STATE BOARD OF EQUALIZATION

California Code of Regulations
Title 18. Public Revenues
Division 2. State Board of Equalization
Chapter 10. Petition and Hearing Procedures

ARTICLE 9. TAXPAYER BILL OF RIGHTS REIMBURSEMENT CLAIMS

5090. DEFINITIONS. BOARD HEARING PROCEDURES: TAXES AFFECTED BY THIS ARTICLE.

a) The definitions of Article 7, Regulation 5070 shall apply to this Article, and Board hearings on claims filed pursuant to this Article shall be conducted pursuant to the hearing procedures set forth in Article 7 commencing with Regulation 5070, except as otherwise noted.

b) This Article applies to reimbursement claims under any of the following programs:

Corporate Franchise and Income Tax --

Personal Income and Bank and Corporation Income Tax
Revenue and Taxation Code Sections 18401-19802

Business and Property Taxes --

Alcoholic Beverage Tax
California Constitution Article XX, Section 22;
Revenue and Taxation Code Sections 32001-32557

California Tire Fee
Public Resources Code Sections 42860-42895;
Revenue and Taxation Code Sections 55001-55381

Childhood Lead Poisoning Prevention Fee
Health and Safety Code Section 105310;
Revenue and Taxation Code Sections 43001-43651

Cigarette and Tobacco Products Tax
California Constitution Article XIII B, Section 12;
Revenue and Taxation Code Sections 30001-30481

Diesel Fuel Tax
Revenue and Taxation Code Sections 60001-60709

Emergency Telephone Users Surcharge
Revenue and Taxation Code Sections 41001-41176

Energy Resources Surcharge
Revenue and Taxation Code Sections 40001-40216

Hazardous Substances Tax
Revenue and Taxation Code Sections 43001-43651

Integrated Waste Management Fee
Revenue and Taxation Code Sections 45001-45984

Marine Invasive Species Fee Collection Law
Public Resources Code Sections 71200-71271;
Revenue and Taxation Code Sections 44000-44008, 55001-55381

Motor Vehicle Fuel Taxes
California Constitution Article XIX, Sections 1-9;
Revenue and Taxation Code Sections 7301-8526

Natural Gas Surcharge

Public Utilities Code Sections 890-900;
Revenue and Taxation Code Sections 55001-55381

Occupational Lead Poisoning Prevention Fee

Health and Safety Code Section 105190;
Revenue and Taxation Code Sections 43001-43651

Oil Spill Response, Prevention and Administration Fees

Revenue and Taxation Code Sections 46001-46751

Private Railroad Car Tax

California Constitution Article XIII, Section 19;
Revenue and Taxation Code Sections 11201-11702

Sales and Use Tax

(including State-administered local sales, transactions and use taxes)
Revenue and Taxation Code Sections 6001-7279.6

Timber Yield Tax

Revenue and Taxation Code Sections 423.5, 431-437, 38101-38908

Underground Storage Tank Maintenance Fee

Revenue and Taxation Code Sections 50101-50162

Use Fuel Tax Law

Revenue and Taxation Code Sections 8601-9355

(c) To the extent that regulations in this Article are in conflict with the International Fuel Tax Agreement, the provisions of the International Fuel Tax Agreement are controlling.

Note: Authority: Section 15606(a), Government Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New article 9 (sections 5090-5095) and section adopted 11-19-97; effective 4-8-98.

2. Amendment of subsection (b) 7-29-99; effective 10-31-99.

3. Amendment of subsection (b) and Note 3-8-01; effective 7-6-01.

4. Amendment of subsection (b) 7-26-04; effective 8-25-04.

5091. ELIGIBLE CLAIMS.

Only those expenses that were incurred after the date of the notice of determination, jeopardy determination or claim for refund in business or property tax cases and after the date of filing an appeal to the Board in corporate franchise and income tax cases are eligible for reimbursement. Expenses incurred in a business tax or Timber Yield Tax case are "related to a hearing before the board" and reimbursable only if the claimant sought Board review of an unfavorable Decision and Recommendation issued by the Appeals Division and only if the Board finds that the action taken by Board Staff was unreasonable. To determine whether Board Staff has been unreasonable, the Board shall consider whether Board Staff has established that its position was substantially justified. This means that a taxpayer whose petition for redetermination or claim for refund is not granted does not have an eligible claim. All expenses incurred in corporate franchise or income tax appeals to the Board are "related to a hearing before the board."

Note: Authority: Section 15606(a), Government Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Amendment of section and Note 3-8-01; effective 7-6-01.
3. Amendment of section 5-25-04; effective 8-25-04.

5092. REASONABLE FEES.

Reasonable fees for professional representation before the Board shall be as provided in Revenue and Taxation Code section 7156, subdivision (c)(1)(B)(iii).

Note: Authority: Section 15606(a), Government Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 44003, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 7156, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Change without regulatory effect amending Note filed 6-11-01.

5093. CLAIM PROCEDURE.

(a) Claim Form. The claim shall be filed with the Chief of Board Proceedings on the Taxpayers' Bill of Rights Reimbursement Claim form (7/98), which is hereby incorporated by reference.

(b) One Year Filing Deadline; Complete Claim Form. The completed claim form shall be filed within one year of the date the decision of the Board becomes final. At the discretion of the Chief of Board Proceedings extensions of time for the filing of a completed claim form may be granted upon a showing of good cause if the written request is filed with the Chief of Board Proceedings prior to the scheduled due date of the claim form. If the claim form filed is incomplete, the claimant shall be granted 30 days additional time to complete the claim form. Failure to file a complete claim within the time granted will result in dismissal of the claim by the Chief of Board Proceedings.

(c) Dismissal of Ineligible Claim. The Chief of Board Proceedings shall dismiss a claim when the Board previously disposed of the case at hearing without granting the petition for redetermination or claim for refund.

(d) Staff Statement. Within 60 days of the filing of a complete claim form, Board Staff and, when applicable, Franchise Tax Board staff, shall submit a statement in response to the claim. At the discretion of the Chief of Board Proceedings extensions of time for the filing of a staff statement may be granted upon a showing of good cause if a written request is filed with the Chief of Board Proceedings before the scheduled due date of the staff statement.

(e) Claimant Response. The staff statement(s) shall be mailed to the claimant, who shall be given the opportunity to respond within 60 days of service of the staff statement with additional written argument and/or documentation, including, but not limited to, declarations under penalty of perjury. At the discretion of the Chief of Board Proceedings, extension of time for the filing of a response may be granted upon a showing of good cause if the written request for extension is filed with the Chief of Board Proceedings before the scheduled due date of the response. If the claimant submits new information or documentation in the response, Board Staff or Franchise Tax Board staff may be given an additional 30 days to respond to the new material.

Note: Authority: Section 15606(a), Government Code; Section 42882; Public Resources Code; Section 893, Public Utilities Code; and Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Amendment of subsection (a) 7-29-99; effective 10-31-99.
3. Amendment of subsections (c) and (d), repealer of subsection (e) and amendment of Note 3-8-01; effective 7-6-01.
4. Amendment of section 5-25-04; effective 8-25-04.

5094. ORAL HEARING ON REIMBURSEMENT CLAIM.

After the submission of documents as set forth in Regulation 5093, the claim shall be scheduled for oral hearing before the Board. The claimant and, when applicable, the Franchise Tax Board shall receive 60 days notice of the hearing date and time, and the procedures shall be governed by Article 7. Oral hearing may be waived by the taxpayer and the matter submitted for decision on the basis of the written submissions.

Note: Authority: Section 15606(a), Government Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Amendment of section 7-29-99; effective 10-31-99.
3. Amendment of section and Note 3-8-01; effective 7-6-01.

5095. NOTICE OF DECISION.

Whether or not an oral hearing is held on the claim, the Board shall send written notice of its decision to the claimant, and, where applicable, to the Franchise Tax Board. Notwithstanding the provisions of Article 7, the Board's decision on the claim is final 30 days from the date it is mailed. Any proposed award of reimbursement shall be available as a public record for at least 10 days prior to the effective date of the award except appeals from actions of the Franchise Tax Board which shall be available as a public record for at least 10 days prior to the effective date of the determination.

Note: Authority: Section 15606(a), Government Code; Section 42882, Public Resources Code; Section 893, Public Utilities Code; Sections 7051, 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 44003, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code.

Reference: Sections 7091, 8269, 9269, 11657, 21013, 30458.9, 32469, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330 and 60630, Revenue and Taxation Code.

History: 1. New section adopted 11-19-97; effective 4-8-98.
2. Amendment of section and Note 3-8-01; effective 7-6-01.

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13. RULES OF ORDER

RULES OF ORDER*

A. PURPOSE OF THE RULES OF ORDER

In general, the proceedings of the Board are governed by regulations found in Title 18 California Code of Regulations 5010 et seq. The Rules of Order are intended to provide for the orderly conduct of Board meetings in those procedural matters not covered by the Constitution, statutes or regulations.

B. DUTIES OF THE CHAIR

1. The Chair shall preside at all meetings of the Board. It is the responsibility of the Chair to conduct the meeting in an orderly manner.
2. In the absence of the Chair, the Vice-Chair shall preside and exercise all the powers and duties of the Chair. If there is a quorum present, and both the Chair and the Vice-Chair are absent, the members present may agree upon a member to preside and serve as temporary Chair.
3. The Chair shall recognize other members who wish to speak.
4. The Chair has the same right to make or second a motion or to debate as the other members. The role of presiding officer need not be assigned to another member while the Chair exercises these rights.
5. The Chair may ask whether there is a motion and a second to bring a matter to a vote, or may move or second a motion to bring a matter to a vote.

C. ORDER OF BUSINESS

The Chair will take up the items of business in the order listed in the published agenda. However, when the circumstances warrant, the Chair may modify the order of business.

D. OBTAINING THE FLOOR

Member must be recognized by the Chair in order to speak on any matter or to make a motion.

E. MOTIONS

1. All motions by a member require a second by another member. If there is no second, the motion dies. However, raising a parliamentary question or point of order is not a motion, and therefore, does not require a second.
2. A member may withdraw a motion or a second at any time before the roll call for the vote on that motion begins.

F. DEBATE

1. Discussion of a matter is permitted while no motion is pending.
2. Except as set forth in the regulations, until such time as a motion to vote on the pending matter has been made and seconded, any member may be recognized and speak on a pending matter.
3. Debate shall be confined to the current matter pending before the Board.

G. VOTING AND CALLING FOR A VOTE

1. Unless there is unanimous consent, voting is by roll call.
2. A motion calling for a vote on a pending matter is not in order until each member who wishes to do so has had an opportunity to speak on the issue.
3. A motion calling for a vote is not debatable.

H. POINT OF ORDER

1. A point of order is the device used to require a deliberative body to observe its own rules and to follow established parliamentary practice. Any member may raise a point of order at any time.
2. The Chair shall rule on a point of order.

RULES OF ORDER*

3. The members may challenge the Chair's decision regarding a point of order by putting the matter to a vote. The affirmative vote of a majority of a quorum will overrule the decision of the Chair regarding a point of order.
4. Before a decision is made regarding a point of order, any member may request the advice or opinion of the Chief Counsel or the Chief Counsel's designee.

I. EXHIBITS

1. At the conclusion of debate, any materials presented by any party which have been marked as exhibit(s) during the pending matter and which the party elects to be entered into the record must be moved into evidence.
2. The Chair shall ask the parties if the exhibit(s) are submitted. Each party must make a motion to move the exhibit(s) into evidence.
3. If there are no objections, the exhibit(s) will be entered into evidence and made a part of the record of the pending matter.
4. If any member or party objects to the admission of evidence, the question shall be discussed and voted upon pursuant to these Rules.

J. COMMITTEE PROCEDURES

1. If a committee meeting is to be held, it should be scheduled in conjunction with a Sacramento Board meeting, absent exceptional circumstances (which shall be approved in advance by the Board).
2. Agenda items for the committee meetings are determined by the committee chair in consultation with the committee staff person. Board Members must submit agenda items for inclusion in the agenda to the committee staff person, in consultation with the committee chair.
3. All committee minutes shall be submitted to the Board for approval at the Administrative Session of the Board meeting, discussed and voted on pursuant to these rules.
4. It is the Board Chair's prerogative to establish new standing advisory committees, subcommittees, or special advisory committees.

K. SUSPENSION OF THE RULES

Any Rule of Order may be suspended in connection with the consideration of a matter before the Board by the affirmative vote of a majority of a quorum.

L. AMENDMENT OF THE RULES

Any Rule of Order may be amended at any regular meeting of the Board by the affirmative vote of a majority of a quorum, provided that notice of any proposed amendment is given pursuant to Government Code Section 11125.

M. CONTROLLING LAW

1. The Constitutional, statutory, regulatory, or case law of this state is controlling over any Rule of Order herein adopted. Where the Attorney General has issued opinions on matter of Board procedure the Board will follow the Attorney General's advice.
2. When a question arises that is not covered by Constitutional, statutory, regulatory, or case law, opinions of the Attorney General, or the Rules of Order, Robert's Rules of Order Newly Revised (1990 edition) shall be the authority followed by the Board in so far as those rules are found to be applicable.
3. Failure to comply with the Rules of Order does not invalidate actions of the Board.

*Adopted by the Board on June 29, 1995; amendments adopted by the Board on August 22, 1996.

**14. ANNUAL CALENDAR
AND LOGISTICS
(BOARD WORKLOAD PLAN)**

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2007 Calendar of Board Meetings

2007 CALENDAR OF BOARD MEETINGS

The remainder of the 2007 Board Workload Plan will be presented to the Board for approval during the first quarter of 2007.

January	31	Sacramento 450 N Street
February	1	Sacramento
February	27, 28	Culver City
March	1	5901 Green Valley Cir.
March	20, 21	Sacramento
April	24, 25	Sacramento
May	31	Sacramento
June	1	Sacramento
June	19, 20, 21	Culver City

Daily Format for Board Meetings

2007 BOARD DATES

Shading indicates holidays and weekends.

Meeting Locations:  Sacramento,  Culver City,  San Diego,  Shell Beach

January

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

February

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

March

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

April

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

May

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

June

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

July

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

August

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

September

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

October

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

November

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

December

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

DAILY FORMAT FOR BOARD MEETINGS

SACRAMENTO MEETINGS

First Meeting Day	9:30	Legislative Committee Business Taxes Committee Customer Services and Administrative Efficiency Committee Property Tax Committee Oral Tax Hearings
	1:30	Oral Tax Hearings Public Hearings Closed Session
Second Meeting Day	9:30	Oral Tax Hearings Nonappearance Matters Chief Counsel Matters Administrative Matters

CULVER CITY AND SAN DIEGO MEETINGS

First Meeting Day	9:30	Oral Tax Hearings
	1:30	Oral Tax Hearings Nonappearance Matters Closed Session
Second Meeting Day	9:30	Oral Tax Hearings
	1:30	Oral Tax Hearings
Third Meeting Day	9:30	Oral Tax Hearings

SHELL BEACH MEETING—COUNTY ASSESSORS' MEETING

First Meeting Day	Meeting w/County Assessors
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Matters for Board Action



MATTERS FOR BOARD ACTION
(With Statutory Deadlines)
ADMINISTRATIVE AGENDA

BOARD MEETING DATE*	ADMINISTRATIVE AGENDA	STATUTORY DEADLINES
2/1/07	❖ Public Hearing—State Assessee Presentations on Capitalization Rates and Other Factors and Procedures Affecting Values	Annually in February
2/27/07	❖ Public Hearing—Business Taxpayers' Bill of Rights Hearings ❖ Public Hearing—Property Taxpayers' Bill of Rights Hearings	Annually in Culver City
3/20/07	❖ Public Hearing—Business Taxpayers' Bill of Rights Hearings ❖ Public Hearing—Property Taxpayers' Bill of Rights Hearings	Annually in Sacramento
4/24/07	❖ Public Hearing—State Assessee Presentations on the Valuation of State-Assessed Properties	Annually in April
5/31/07	❖ Board Sets Unitary Values for State-Assessed Property	5/31/07
5/31/07	❖ Public Hearing—Timber Yield Tax Rate ❖ Public Hearing—Timber Harvest Values	Semi-Annually 6/30/07
5/31/07	❖ Voting Items at Multistate Tax Commission's Annual Meeting	7/1/07
	❖ Budget Change Proposals	Annually
	❖ Public Hearing—Timber Yield Tax Rate ❖ Public Hearing—Timber Harvest Values	Semi-Annually 12/31/07

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MATTERS FOR BOARD ACTION
(With Statutory Deadlines)
CONSENT AGENDA

BOARD MEETING DATE*	CONSENT AGENDA	STATUTORY DEADLINES
4/24/07	❖ 4-R Act Equalization Ratio	5/31/07
5/31/07	❖ Tobacco Tax Rate	7/1/07
	❖ Assessment of Private Railroad Car Tax Roll	8/1/07
	❖ Private Railroad Car Tax Rate	8/1/07
	❖ Assessment of State-Assessed Properties Board Roll	7/31/07
	❖ Coins and Bullion Bulk Sale Adjustment	9/1/07
	❖ Emergency Telephone User's Surcharge Rate	9/15/07
	❖ Diesel Fuel Tax Interstate User Component Rate	10/1/07
	❖ Base Fee Rates	10/15/07
	❖ Prepayment Rate for Sales Tax on Motor Vehicle Fuel, Diesel Fuel and Jet Fuel	11/1/07
	❖ Timberland Production Zone Values	11/30/07
	❖ Effects of Proposition 10 on Cigarette and Tobacco Product Consumption (Health & Saf. Code, § 130105(c).)	Annually in November
	❖ Draft Summons of County Assessors to a State Board of Equalization Meeting	Annually In September

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MATTERS FOR BOARD ACTION
(Without Statutory Deadlines*)
ADMINISTRATIVE AND CONSENT AGENDA

ADMINISTRATIVE AGENDA	CONSENT AGENDA
<ul style="list-style-type: none"> ❖ Organization of the Board ❖ Contracts Over \$1 Million ❖ Board Photograph ❖ Budget Change Proposals ❖ Board Workload Plan ❖ FY Baseline Budget ❖ Board/Assessors' Meeting ❖ Multistate Tax Commission Resolutions ❖ Special Presentations: <ul style="list-style-type: none"> • Board Resolutions • Retirement Resolutions • 25-Year Service Awards • Superior Accomplishment Awards 	<ul style="list-style-type: none"> ❖ Timber Advisory Committee Appointments ❖ Substantive and non-substantive revisions to Audit Manual ❖ Approval of Superior Accomplishment Award Nominees ❖ Extensions of Time for filing Welfare Affidavits and Financial Statements ❖ Extensions of Time for Filing Welfare Affidavits and Financial Statements ❖ Board Resolutions ❖ Retirement Resolutions ❖ Board Meeting Minutes ❖ Assessors' Handbook Section Revisions ❖ Memorandum of Understanding Among Other Agencies

*Dates for Board action to be determined as needed

2007 Public Utilities & Railroads

2007 CALENDAR FOR THE VALUATION OF PUBLIC UTILITIES AND RAILROADS

January 2	State-Assessed Properties Division staff mails property statements to state assessees and informs them that when completed, copies of the staff's capitalization rate study and a summary of the staff's working papers on value indicators will be available upon request, and that the staff will be available to discuss these data.
January 16	Last day to file request with the Chief of Board Proceedings for the February 1 agenda to make presentations to the Board on capitalization rates and other factors and procedures affecting FY 2007-08 values of state-assessed properties.
February 1	Board will hear state assessees' presentations on capitalization rates and other factors and procedures affecting the FY 2007-08 value of state-assessed properties. In lieu of oral presentations, assessees may submit written presentations to the Chief of Board Proceedings by February 1.
March 1	Last day for state assessees to timely file property statements with the Board. Failure to file timely will result in penalties unless an extension is granted. Extensions are granted only in cases where reasonable cause is established.
April 10	Last day to file request with the Chief of Board Proceedings for the April 24 agenda to make presentations to the Board on the valuation of state-assessed properties.
April 24	Board will hear state assessees' presentations on the valuation of state-assessed properties. In lieu of oral presentations, assessees may submit written presentations to the Chief of Board Proceedings by April 24.
May	Staff discusses value indicators and supporting data with state assessees.
May 23	Staff will provide to the Board the value indicators recommended for unitary values of state-assessed property.
May 31	Board sets unitary values of state-assessed property.
June 1	<ol style="list-style-type: none">1. Staff mails notices of unitary value and copies of Appraisal Data Reports to state assessees.2. State assessees have until July 20 to file a petition for reassessment of unitary value. Chief of Board Proceedings may grant one 15-day extension of time to file a petition for reassessment provided the request for an extension is filed with the Board prior to July 20.

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|-------------------------------|---|
| On or before
June 15 | <ol style="list-style-type: none">1. Staff mails notices of allocated assessed values and proposed assessed values of nonunitary property to state assessees.2. State assessees have until July 20 to file a petition for correction of an allocated assessed value. |
| On or before
July 15 | Staff transmits estimates of total assessed value to county auditors. |
| On or before
July 31 | <ol style="list-style-type: none">1. Board adopts and staff transmits to counties Board Roll of State-Assessed Property.2. Staff mails notices of assessed values of nonunitary property to state assessees.3. State assessees have until September 20 to file a petition for reassessment of nonunitary value. Board may grant one 15-day extension of time to file a petition for reassessment provided the request for an extension is filed with the Board prior to September 20. |
| September
thru
December | Board will hear petitions for reassessment of unitary and nonunitary values, and petitions for penalty abatement, and petitions for correction of allocated assessed values. |
| December 31 | Final date for Board decisions on 2007 petitions for reassessment of unitary and nonunitary values, petitions for penalty abatement and petitions for correction of allocated assessed values. |

2007 Private Railroad Car Tax

2007 CALENDAR FOR ASSESSMENT AND COLLECTION OF PRIVATE RAILROAD CAR TAX

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|-------------------------------------|--|
| January 16 | Last day to file request with the Chief of Board Proceedings for the February 1 agenda to make presentations to the Board on factors and procedures affecting FY 2007-08 values of private railroad cars. |
| February 1 | <ol style="list-style-type: none">1. State-Assessed Properties Division staff sends Annual Report of Private Railroad Cars (BOE-519-PC) to private railroad car assessees. Staff informs assessees that when completed, a summary of staff's working papers will be available upon request. Staff will be available to discuss these values.2. Board will hear private railroad car assessees' presentations on factors and procedures affecting FY 2007-08 taxable values of private railroad cars. In lieu of oral presentations, assessees may submit written presentations to the Chief of Board Proceedings by February 1. |
| April 30 | Last day to file Annual Report of Private Railroad Cars. Failure to file timely will result in a penalty unless an extension is granted. Extensions are granted only where reasonable cause is established. |
| July 2-13 | Staff discusses taxable values and supporting data with private railroad car assessees. |
| On or Before
August 1 | <ol style="list-style-type: none">1. Board adopts Private Railroad Car Assessment Roll.2. Staff mails notices of assessment and copies of working papers. |
| September 20 | Last day to file a petition for reassessment and/or abatement of penalty. When reasonable cause is established, the Board may extend the filing deadline to October 5. |
| On or Before
October 15 | Staff mails Notices of Assessment and of Taxes Levied Thereon (Tax Bills). |
| December 10 | Last day to pay private railroad car tax without incurring a penalty and interest. |
| On or Before
January 31,
2008 | Board hears petitions for reassessment and petitions for abatement of penalty. Postponements of Board hearings are granted for only the most compelling reasons. |

Key Contacts for Board Meeting Information

KEY CONTACTS FOR BOARD MEETING INFORMATION

If you have questions about Board meetings, call the staff listed below by area of responsibility.

ADMINISTRATIVE AGENDA

- | | |
|--------------------------|----------------------------------|
| ■ Administrative Matters | Joann Richmond
(916) 322-1931 |
| ■ Consent Agenda | Joann Richmond
(916) 322-1931 |

BANKRUPTCY

- | | |
|----------------------------|------------------------------------|
| ■ Business Taxes Petitions | Russell Williams
(916) 445-0358 |
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BOARD HEARING AGENDAS

- | | |
|--------------------------|------------------------------------|
| ■ Board Agenda Deadlines | Joann Richmond
(916) 322-1931 |
| ■ Notice and Agenda | Joann Richmond
(916) 322-1931 |
| ■ Scheduling Calendars | Claudia Madrigal
(916) 324-8261 |

BOARD HEARING SCHEDULING, POSTPONEMENTS, SUMMARIES AND BRIEFS

- | | |
|--|------------------------------------|
| ■ Applications for Review of Local Assessments | Joann Richmond
(916) 322-1931 |
| ■ Cigarette Licensing Fee Appeals | Catherine Wurst
(916) 445-7086 |
| ■ Corporate Franchise and Personal Income Tax Appeals | Rebecca Landeros
(916) 445-7696 |
| ■ Homeowner and Renter Property Tax Assistance Appeals | Rebecca Landeros
(916) 445-7696 |
| ■ Local Tax Reallocation Appeals | Catherine Wurst
(916) 445-7086 |
| ■ Private Railroad Car Annual and Escape Assessments | Joann Richmond
(916) 322-1931 |
| ■ Sales and Use Tax and Special Taxes | Catherine Wurst
(916) 445-7086 |

■ Sales and Use Tax and Special Taxes Settlement Proposals	Phillip Bishop (916) 324-2844
■ State Assessee Annual and Escape Assessments	Joann Richmond (916) 322-1931
■ Taxpayer Bill of Rights Reimbursement Claims	Joann Richmond (916) 322-1931
■ Welfare Exemption Claims	Joann Richmond (916) 322-1931

BOARD COMMITTEES

■ Business Taxes Committee	Leila Khabbaz (916) 322-5271
■ Customer Service & Administrative Efficiency Committee	Kari Hammond (916) 324-2507
■ Legislative Committee	Alice Portillo (916) 445-6566
■ Property Tax Committee	Kathie Newton (916) 445-1517

CONTRIBUTION DISCLOSURES

■ Contribution Disclosures and Reports	Anita Biedermann (916) 327-1798
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CLOSED SESSION

■ Closed Session Agenda	Joann Richmond (916) 322-1931
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MINUTES, TRANSCRIPTS AND AUDIO

■ Board Meeting Minutes	Rose Smith (916) 323-9656
■ Board Meeting Transcripts	Rose Smith (916) 323-9656
■ Board Meeting Audio	Claudia Madrigal (916) 324-8261

NONAPPEARANCE SCHEDULES

■ Chief Counsel Matters--Rulemaking	Diane Olson (916) 322-9569
■ Chief Counsel Property Tax Matters	Joann Richmond (916) 322-1931

Key Contacts for Board Meeting Information

■ Corporate Franchise and Personal Income Tax Matters	Rebecca Landeros (916) 445-7696
■ Homeowner and Renter Property Tax Assistance Matters	Rebecca Landeros (916) 445-7696
■ Insurance Tax Matters	Carmen Castillo (916) 324-4689
■ Legal Appeals Matters	Catherine Wurst (916) 445-7086
■ Legal Appeals Property Tax Matters	Joann Richmond (916) 322-1931
■ Property Tax Matters	Kathie Newton (916) 445-1517
■ Sales and Use Tax Matters	Dennis Iden (916) 445-2270
■ Settlement Proposals	Phillip Bishop (916) 324-2844
■ Special Tax Matters	Carmen Castillo (916) 324-4689
■ Taxpayers' Bill of Rights Claims	Joann Richmond (916) 322-1931

NOTICES OF DECISION

■ Business Taxes Notice of Redetermination Statement of Account	Steve Adams (916) 445-2288 Chuck Sakamoto (916) 445-2204
■ Corporate Franchise and Personal Income Tax Appeals	Amy Kelly (916) 323-2029
■ Homeowner and Renter Property Tax Assistance Appeals	Amy Kelly (916) 323-2029
■ Property Taxes	Robert Lambert (916) 324-6593

ROUTE SLIPS

■ Board Proceedings Division	Tabitha Baland (916) 324-2591
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SETTLEMENT PROPOSALS

■ Settlement Proposals	Phillip Bishop (916) 324-2844
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SUBPOENAS



Greg Day
(916) 327-3400

TAXPAYERS' BILL OF RIGHTS PUBLIC HEARINGS

- Business Taxes

Laureen Simpson
(916) 445-0218

- Property Taxes

Mark Sutter
(916) 324-2797

BOARD WORKLOAD REPORTS

- Annual Rulemaking Calendar

Diane Olson
(916) 322-9569

- Corporate Franchise and Personal Income
Tax Cases (Monthly)

Rebecca Landeros
(916) 445-7696

- Homeowner and Renter Property Tax
Assistance Cases (Monthly)

Rebecca Landeros
(916) 445-7696

- Property Tax Appeals Inventory
Status Report (Monthly)

Joann Richmond
(916) 322-1931

- Property Tax Cases Heard by the Board
and Pending Decision (Monthly)

Joann Richmond
(916) 322-1931

- Property Tax Findings and Decisions
Status Report (Monthly)

Joann Richmond
(916) 322-1931

- Sales and Use Tax and Special Tax Cases
(Monthly)

Catherine Wurst
(916) 445-7086

- Sales and Use Tax and Special Taxes
Regulations and Property Tax Rules
Status on Board Website

Diane Olson
(916) 322-9569

- Taxpayer Bill of Rights Reimbursement
Claims Status Report (Monthly)

Joann Richmond
(916) 322-1931

- Workload Management Report (Monthly)

Gary Evans
(916) 445-4394

Sacramento Logistics

SACRAMENTO BOARD ROOM INFORMATION

MEETING LOCATION

State Board of Equalization
450 N Street, Room 121
Sacramento, CA 95814

BUILDING INFORMATION

- The hearing location is accessible to people with disabilities.
- The 450 N Street building has a public cafeteria located on the first floor.
- Pay telephones and an ATM machine are located near the cafeteria.

PARKING

The 450 N Street building does not have parking available. Public parking lots are located at:

- 4th and L
- 6th and L
- 500 Capitol Mall
- Old Sacramento
- 500 R Street
- 3rd and Capitol

Rates at these locations vary. Metered on-street parking is available near the building. Rates are 25 cents per 15 minutes with a maximum allowed parking time of two hours.

SERGEANTS-AT-ARMS

The Sergeants-at-Arms:	Ramona DeMoulin	(916) 324-2144
	Gary Johnson	(916) 227-6716

Culver City Logistics

CULVER CITY BOARD ROOM INFORMATION

MEETING LOCATION

Culver City District Office – 2nd Floor
5901 Green Valley Circle, Room 207
Culver City, CA 90231-3652

BUILDING INFORMATION

- The hearing location is accessible to people with disabilities.
- A pay telephone and restrooms are located next to the Boardroom.
- Additional restrooms are located on the first floor.

PARKING

- Free parking is available at the building site.

CONTACTS

District Administrator	Wayne Mashihara	(310) 342-1058
Secretary	Keely Su	(310) 342-1057
District Principal Auditor	Gilbert A. Smith	(310) 342-1059
District Principal Compliance Supervisor	Erin Little	(310) 342-1050
Sergeants-at-Arms	Andnet Habtemariam	(310) 795-5613
	Karen Heads	(310) 871-7824

**CULVER CITY OFFICES
Contact Information**

Honorable Betty T. Yee, First District	Room 214	(310) 342-1131
Honorable Bill Leonard, Second District	Room 212	(310) 342-1129
Honorable Michelle Steel, Third District	Room 210	(310) 342-1134
Honorable Judy Chu, Fourth District	Room 208	(310) 342-1132
Honorable John Chiang, State Controller/Ex-Officio	Room 209	(310) 342-1133
Ramon Hirsig, Executive Director	Room 213	(310) 342-1130
Gary Evans, Acting Chief, Board Proceedings	Room 213	(310) 342-1130
Board Hearing Staff	Room 253	(310) 342-1144
Board Hearing Staff	Room 251	(310) 342-1145
Facsimile Machine		(310) 342-1135

NOTE: If you need to get an urgent message to participants in Board meetings, please call the District Administrator's telephone number (310) 342-1058.

Significant Dates & Descriptions

SIGNIFICANT DATES AND DESCRIPTIONS

DECEMBER 2006

- 4 Legislature convenes for Organizational Session of the FY 2007-08 Regular Session

JANUARY 2007

- 1 First day for Board to inform every assessee of the amount of value of unitary and nonunitary property value. (Rev. & Tax. Code, §§ 731 and 732.)
Lien date for all taxable property, public utilities, railroads, and private railroad cars.
- 2 State-Assessed Properties Division staff sends property statement to state assesses and informs them that when completed, copies of the staff's capitalization rate study and a summary of the staff's working papers on value indicators will be available upon request and that the staff will be available to discuss these data.
- 3 Legislature reconvenes from Organizational Recess for FY 2007-08 session
- 4-5 Multi-State Tax Commission – Winter Executive Committee meeting, San Diego
- 8 Constitutional Officers take oath of office
- 9 Governor's State of the State Address
- 10 Last day for Governor to send Budget to Legislature
- 15 Martin Luther King's Birthday (Observed)
- 16 Last day to file request with the Chief of Board Proceedings for the February 1 agenda to make presentations to the Board on capitalization rates and other factors and procedures affecting FY 2007-08 values of state-assessed properties.
- 16-19 Bay Area Assessors' Conference – Contra Costa County
- 31 Last day for Executive Director to distribute Calendars for Valuation of Public Utilities, Railroads & Private Railroad Cars to state assesses. (Property Tax Rule 901.5.)
Last day for Board to hear petitions for reassessment of 2007 private railroad car tax.

FEBRUARY 2007

- 1 State-Assessed Properties Division staff sends annual report of Private Railroad Cars (BOE 519-PC) to private railroad car assessees. Staff informs assessees that when completed, a summary of staff's working papers will be available upon request. Staff will be available to discuss these values.

Board will hear state assessees' presentations on capitalization rates and other factors and procedures affecting FY 2007-08 values of California state-assessed public utilities and railroads. In lieu of oral presentations, assessees may submit written presentations to the Chief of Board Proceedings by February 1.

Board will hear private railroad car assessees' presentations on factors and procedures affecting FY 2007-08 taxable values of private railroad cars. In lieu of oral presentations, assessees may submit written presentations to the Chief of Board Proceedings by February 1.

Board Reviews Timber Tax Advisory Committee Membership

- 9-11 California Republican Convention
- 12 Abraham Lincoln's Birthday (Observed)
- 18 Chinese New Year
- 19 President's Day (Observed)
- 22 George Washington's Birthday

MARCH 2007

- 1 Last day for state assessees to timely file property statements with the Board. Failure to file timely will result in penalties unless an extension was granted. Extensions are granted only in cases where good cause is established.
- 20-23 Multi-State Tax Commission - Winter/Spring Program Committee meeting, San Diego
- 22 California Taxpayers' Association Annual Meeting, Breakfast with the Board – Sacramento
- 31 Cesar Chavez Holiday

APRIL 2007

- 1 State Assessee's property statements due (if extension granted). (Property Tax Rule 901.)
- 6 Good Friday
- 10 Last day to file request with the Chief of Board Proceedings for the April 24 agenda to make presentations to the Board on the valuation of state-assessed properties.
- 16 Internal Revenue Service and Franchise Tax Board Income Tax Filing Deadline
- 20 Passover
- 24 Board will hear state assessee's presentations on the valuation of state-assessed properties. In lieu of oral presentations, assessee's may submit written presentations to the Chief of Board Proceedings by April 24.
- 27-29 California Democratic Convention
- 30-May 3 Central-Southern Assessors' Conference – Santa Barbara
- 30 Last day to file Annual Report of Private Railroad Cars. Failure to file timely will result in a penalty unless an extension was granted. Extensions are granted only where good cause is established. (Rev. & Tax. Code, § 11271.)

MAY 2007

- 1-24 Staff discusses value indicators and supporting data with state assessee's.
 - 12 Staff will provide to the Board the indicators of value and its recommendations for unitary values of state-assessed properties.
 - 28 Memorial Day (Observed)
 - 31 Board sets unitary values of state-assessed properties. Staff will provide to the Board, in advance, the indicators of value and their recommendations for unitary values. (Rev. & Tax. Code, § 781.)
- Board adopts 4R Act Equalization Ratio for FY 2007-08.

JUNE 2007

- 1 Last day to inform state assessees of full and assessed value of unitary property. (Rev. & Tax. Code, § 731.)
- 5 Primary Election Day
- 10-13 Federation of Tax Administrators - Annual Meeting, Chicago, IL
- 15 Last day for Legislature to pass Budget
- 30 Last day for Board to adopt Timber Harvest Values. (Rev. & Tax. Code, § 38204.)

JULY 2007

- 1 Last day for the Board to set the Tobacco Products Tax Rate. (Rev. & Tax. Code, § 30123.)
- 2-13 Staff discusses taxable values and supporting data with private railroad car tax assessees.
- 4 Fourth of July (Observed)
- 8-11 Southeastern Association of Tax Administrators, Lake Buena Vista, FL
- On or Before 15 Board to transmit estimates of total assessed value to county auditors. (Rev. & Tax. Code, § 755.)
- 20 or 2 weeks after filing Last day to make application for review of assessment of publicly-owned property roll. (Rev. & Tax. Code, § 1840.)
- 29-Aug. 2 Multistate Tax Commission Annual Meeting – Minneapolis, MN
- 31 Last day for Board to adopt and staff to transmit Board roll of state-assessed property. (Rev. & Tax. Code, § 756.)
Last day for Board to adopt Private Railroad Car tax rate.
Last day for staff to mail notices of assessed values of nonunitary property to state assessees. (Rev. & Tax. Code, § 732.)

AUGUST 2007

- 1 Last day for Board to adopt private railroad car assessment roll. (Rev. & Tax. Code, § 11336.)
Staff mails notices of private railroad car assessment and copies of working papers.
- 1-21 Private railroad car assessment roll open to inspection. (Rev. & Tax. Code, § 11337.)
- TBD Federation of Tax Administrators – Technology Conference, Albuquerque, NM
- 19-21 Mid-West States Association of Tax Administrators, Omaha, NE
- TBD Northern Regional Assessors' Conference, Location to be determined
- 31 Last day for staff to transmit prescribed property statement forms to county assessors. (Rev. & Tax. Code, § 452.)

SEPTEMBER 2007

- 1 Final date for Board to index the coins and bullion bulk sale threshold for inflation, based on the California Consumer Price Index. (Rev. & Tax. Code, § 6355.)
Department of General Services determines the Emergency Telephones Users Surcharge rate and notifies the Board. (Rev. & Tax. Code, §§ 41030 and 41031.)
- 3 Labor Day (Observed)
- 5-8 North East States' Tax Officials Association, Washington, DC
- 9-12 Western States Association of Tax Administrators, Santa Fe, NM
- 13 Last day for Board to publish Emergency Telephone Users Surcharge rate in its minutes and notify by mail every service supplier registered with it of the new rate. (Rev. & Tax. Code, §§ 41031 and 41032.)
- 13 Rosh Hashanah
- 22 Yom Kippur
- 30-Oct. 3 Federation of Tax Administrators – Motor Fuel Tax Section Annual Meeting, Baton Rouge, LA

OCTOBER 2007

- 1 Last day for the Board to set the Diesel Fuel Tax Interstate User Component b Rate. (Rev. & Tax. Code, § 60116.)
The Board shall levy private railroad car tax. (Rev. & Tax. Code, § 11401.)
- 8 Columbus Day (Observed)
- 15 The last day for the Board to adopt the following fee rates:
 - Occupational Lead Poisoning Fee (Health & Saf. Code, § 105190)
 - Hazardous Waste Disposal Fee (Health & Saf. Code, § 25174.6)
 - Hazardous Waste Facility Fee (Health & Saf. Code, §§ 25205.2, 25205.4)
 - Hazardous Waste Generator Fee (Health & Saf. Code, § 25205.5)
 - Hazardous Waste Environmental Fee (Health & Saf. Code, § 25205.6)
 - Hazardous Waste Activity Fee (Health & Saf. Code, § 25205.7)
 - Permit by Rule and Conditional Authorization Fee (Health & Saf. Code, § 25205.14).
Last day for staff to mail assessment notices and tax bills to private railroad car owners. (Rev. & Tax. Code, § 11404.)
- 15-18 2007 Annual Assessors' Conference – Shell Beach

NOVEMBER 2007

- 1 Last day to determine the sales tax prepayment rate per gallon of motor vehicle fuel for the 12 months commencing April 1 of the following year. (Rev. & Tax. Code, § 6480.1(f).)
- 6 Election Day
- TBD Franchise Tax Board Tax Policy Conference, location to be determined
- 12 Veteran's Day (Observed)
- 22-23 Thanksgiving Holiday (Observed)

DECEMBER 2007

- 1 Last day for Executive Director to provide Board with proposed calendar for valuation of public utilities, railroads and private railroad cars. (Property Tax Rule 901.5.)
The last day for the Board to certify TPZ Timberland Values to County Assessors. (Rev. & Tax. Code, § 434.5(d).)
- 10 Last day to pay private railroad car tax without incurring a penalty and interest. (Rev. & Tax. Code, §§ 11404 and 11405.)
- 12 Hanukkah
- 25 Christmas
- 31 Last day to adopt timber harvest values. (Rev. & Tax. Code, § 38204.)
Last day to make decisions on state assessee 2007 petitions for reassessment of unitary or nonunitary property and petitions for correction of allocated state-assessed property values. (Rev. & Tax. Code, §§ 744 and 749.)

**Board Meeting Planning Calendars
(January - June 2007)**

**JANUARY 2007
SACRAMENTO**

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31 			



Indicates a Sacramento meeting
Shading indicates holidays and weekends

WEDNESDAY 1:30
January 31

Organization of the Board
Legislative Committee
Business Taxes Committee
Customer Services and Administrative Efficiency Committee
Property Tax Committee
Oral Tax Hearings
Closed Session


Deadlines:

January 16 *Last day to add items to the Administrative and Closed Session Agendas and the Public Agenda Notice*

January 19 *Last date for Board Proceedings and Board Committee Staff to distribute materials*

Public Agenda Notice is posted to the BOE website

**FEBRUARY 2007
SACRAMENTO**

S	M	T	W	T	F	S
				1 	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			



Indicates a Sacramento meeting
Shading indicates holidays and weekends

THURSDAY 9:30 Oral Tax Hearings
February 1 Public Hearing
Nonappearance Matters
Chief Counsel Matters
Administrative Matters
Closed Session

adlines:

January 16 Last day to add items to the Administrative and Closed Session Agendas and the Public Agenda Notice

January 19 Last date for Board Proceedings and Board Committee Staff to distribute materials

Public Agenda Notice is posted to the BOE website

**FEBRUARY / MARCH 2007
CULVER CITY**

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	1		



Indicates a Culver City meeting
Shading indicates holidays and weekends

TUESDAY February 27	9:30	Oral Tax Hearings
	1:30	Oral Tax Hearings Nonappearance Matters Closed Session Business Taxpayers' Bill of Rights Hearings Property Taxpayers' Bill of Rights Hearings
WEDNESDAY February 28	9:30	Oral Tax Hearings
	1:30	Oral Tax Hearings
THURSDAY March 1	9:30	Oral Tax Hearings



Deadlines:

February 13 ***Last day to add items to the Administrative and Closed Session Agendas and the Public Agenda Notice***

February 16 ***Last date for Board Proceedings and Board Committee Staff to distribute materials***

Public Agenda Notice is posted to the BOE website

**MARCH 2007
SACRAMENTO**

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20 	21 	22	23	24
25	26	27	28	29	30	31



Indicates a Sacramento meeting
Shading indicates holidays and weekends

TUESDAY 9:30 Legislative Committee
March 20 Business Taxes Committee
Customer Services and Administrative Efficiency Committee
Property Tax Committee
Oral Tax Hearings

1:30 Oral Tax Hearings
Public Hearings
Business Taxpayers' Bill of Rights Hearings
Property Taxpayers' Bill of Rights Hearings
Closed Session

WEDNESDAY 9:30 Oral Tax Hearings
March 21 Nonappearance Matters
Chief Counsel Matters
Administrative Matters



Deadlines:

March 6 Last day to add items to the Administrative and Closed Session Agendas and the Public Agenda Notice

March 9 Last date for Board Proceedings and Board Committee Staff to distribute materials

Public Agenda Notice is posted to the BOE website

**APRIL 2007
SACRAMENTO**

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24 	25 	26	27	28
29	30					



Indicates a Sacramento meeting
Shading indicates weekends

TUESDAY 9:30 Legislative Committee
April 24 Business Taxes Committee
Customer Services and Administrative Efficiency Committee
Property Tax Committee
Superior Accomplishment Award Presentations
Oral Tax Hearings

1:30 Oral Tax Hearings
Public Hearings

WEDNESDAY 9:30 Oral Tax Hearings
April 25 Nonappearance Matters
Chief Counsel Matters
Administrative Matters
Closed Session

Deadlines:


April 10 Last day to add items to the Administrative and Closed Session Agendas and the Public Agenda Notice

April 13 Last date for Board Proceedings and Board Committee Staff to distribute materials

Public Agenda Notice is posted to the BOE website

**MAY 2007
SACRAMENTO**

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		


 Indicates a Sacramento meeting
Shading indicates holidays and weekends


THURSDAY May 31	9:30	Legislative Committee Business Taxes Committee Customer Services and Administrative Efficiency Committee Property Tax Committee Oral Tax Hearings
	1:30	Oral Tax Hearings Public Hearings Closed Session

Deadlines:

- May 15** *Last day to add items to the Administrative and Closed Session Agendas and the Public Agenda Notice*
- May 18** *Last date for Board Proceedings and Board Committee Staff to distribute materials*
Public Agenda Notice is posted to the BOE website

**JUNE 2007
SACRAMENTO**

S	M	T	W	T	F	S
					1 	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

 Indicates a Sacramento meeting
Shading indicates holidays and weekends

FRIDAY
June 1

9:30

Oral Tax Hearings
Nonappearance Matters
Chief Counsel Matters
Administrative Matters

Deadlines:

May 15 Last day to add items to the Administrative and Closed Session Agendas and the Public Agenda Notice

May 18 Last date for Board Proceedings and Board Committee Staff to distribute materials

Public Agenda Notice is posted to the BOE website

**JUNE 2007
CULVER CITY**

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30



Indicates a Culver City meeting
Shading indicates holidays and weekends

TUESDAY 9:30 Oral Tax Hearings
June 19

1:30 Oral Tax Hearings
Nonappearance Matters
Closed Session

WEDNESDAY 9:30 Oral Tax Hearings
June 20

1:30 Oral Tax Hearings

THURSDAY 9:30 Oral Tax Hearings
June 21

Deadlines:

June 5 Last day to add items to the Administrative and Closed Session Agendas and the Public Agenda Notice

June 8 Last date for Board Proceedings and Board Committee Staff to distribute materials

Public Agenda Notice is posted to the BOE website

15. APPENDIX

AGENDA TEMPLATE

BOARD COMMITTEE MEETINGS

- ***Legislative Committee***

The committee considers issues relating to legislative proposals and recommends Board positions on Assembly and Senate bills.

- ***Customer Services and Administrative Efficiency Committee***

The committee addresses issues that affect customer service to taxpayers and administrative operations throughout the Board.

- ***Business Taxes Committee***

The committee provides a forum to discuss proposed regulations and policies relating to sales and use tax and special taxes.

- ***Property Tax Committee***

The committee promotes uniformity and consistency in property tax assessment and administration by providing a forum to discuss property tax rules and guidelines.

BOARD MEETING

ANNUAL BOARD MEMBER PHOTOGRAPH

The Board Members take an annual photograph, which is traditionally scheduled at the May Sacramento meeting.

SPECIAL PRESENTATION

The Board Members make special presentations to staff members and others (i.e., resolutions, Superior Accomplishment Awards, 25 Years Service Award).

ORAL HEARINGS

Parties present oral arguments regarding reduction or cancellation of tax liability, refund of taxes previously paid, reduction in assessed value, or other relief. Contribution disclosure forms are required for oral hearings.

The 5 major categories and sub-categories of oral hearings are:

A. Homeowner and Renter Property Tax Assistance Hearings

- Claim for Assistance

B. Corporate Franchise and Personal Income Tax

- Bank & Corporate Income Tax
- Personal Income Tax
- Taxpayers' Bill of Rights Reimbursement Claim

C. Sales and Use Tax

- Sales and Use Tax
- Local Tax Reallocation Hearing
- Taxpayers' Bill of Rights Reimbursement Claim

D. Special Taxes

- Excise Taxes and Fees
- Fuel Taxes
- Taxpayers' Bill of Rights Reimbursement Claim
- Cigarette License Fee Appeals Hearings
- Petition for Release of Seized Property

E. Property Taxes

- State Assessed Appeal (Private Railroad Cars, Escaped Assessments)
- Application for Review, Equalization & Adjustment of Assessment
- Welfare Exemption Claim
- Timber Yield Tax Appeal
- Taxpayers' Bill of Rights Reimbursement Claim

PUBLIC HEARINGS

F. Public Hearings

Examples of public hearings include:

- Rulemaking
The adoption, amendment or repeal of regulations.
- Property Tax
Capitalization, timber yield rates and timber harvest values.
- Taxpayers' Bill of Rights Annual Hearings
Business Taxes - industry representatives and individual taxpayers present proposals on changes to the business tax law, programs, policies or procedures.
Property Taxes - assessors, local agency representatives, and taxpayers propose changes to the property tax law, programs, policies or procedures.

TAX PROGRAM NONAPPEARANCE MATTERS

Tax matters placed on nonappearance calendars require Board Member action, but do not require taxpayer appearance.

G. TAX PROGRAM NONAPPEARANCE MATTERS – CONSENT

Tax matters are placed on consent calendars for the following reasons: taxpayer indicated he or she does not desire an oral hearing, waived appearance, fail to respond to the notice of hearing, petitions for rehearing, and request for written decision. Contribution disclosure forms are not required.

H. TAX PROGRAM NONAPPEARANCE MATTERS – ADJUDICATORY

Tax matters are placed on adjudicatory calendars for the following reasons: petition previously appeared on a published Board meeting calendar, pulled by staff or Board Member at a previous Board meeting, or when there has been substantial Board Member contact with the parties and/or staff. Contribution disclosure forms are required.

The 10 major categories and sub-items within Items G and H are:

1. Legal Appeals
 - Cases Heard but not Decided (Adjudicatory Calendar only)
 - Petitions for Rehearing
 - Hearing Notice Sent - No Response-
 - Hearing Notice Sent - Appearance Waived
 - Hearing Request Withdrawn

- Memo Opinion
 - Hearing Notice Sent - Hearing Request Withdrawn
 - Petition for Release of Seized Property
 - Matters for Board Consideration (Adjudicatory Calendar only)
2. Corporate Franchise and Personal Income Tax
 - Formal Opinion
 - Decisions
 - Petitions for Rehearing
 - Opinion on Petition for Rehearing
 3. Homeowner and Renter Property Tax Assistance
 - Decisions
 - Petitions for Rehearing
 4. Sales and Use Tax Matters
 - Redeterminations
 - Relief of Penalty
 - Denials of Claims for Refund
 - Denials of Relief of Penalty
 - Recission of Denial of Refund
 5. Sales and Use Tax – Credits & Cancellations and Refunds
 - Credits and Cancellations
 - Refunds
 6. Special Taxes Matters
 - Redeterminations
 - Relief of Penalty
 - Denial of Claims for Refund
 - Denial of Relief of Penalty
 7. Special Taxes – Credits & Cancellations and Refunds
 - Credits and Cancellations
 - Refunds
 8. Property Tax Matters
 - Petitions for Reassessment of Unitary/Nonunitary Value
 - Petitions for Penalty Abatement on Unitary/Nonunitary Value
 - Petitions for Reassessment and Penalty Abatement on Unitary/Nonunitary Value
 - Petitions for Reassessment and Penalty Abatement on Unitary Escaped Assessment
 - Petitions for Reallocation of Unitary Value
 - Petitions for Reassessment of Private Railroad Car Tax
 - Timber Yield Tax Claim for Refund
 9. Cigarette License Fee Matters
 - Revocation Upheld
 - Revocation Rescinded
 10. Legal Appeals Property Tax Matters
 - Petitions for Reassessment of Unitary/Nonunitary Value
 - Petitions for Penalty Abatement on Unitary/Nonunitary Value
 - Petitions for Reassessment and Penalty Abatement on Unitary/Nonunitary Value
 - Petitions for Reassessment and Penalty Abatement on Unitary Escaped Assessment
 - Petitions for Reallocation of Unitary Value
 - Petitions for Reassessment of Private Railroad Car Tax
 - Timber Yield Tax Claim for Refund

I. TAX PROGRAM NONAPPEARANCE MATTERS - Not Subject To Contribution Disclosure Statute

1. Property Taxes

This calendar is used for staff-generated Property Tax matters such as audit assessments, unitary and nonunitary escaped assessments, unitary land escaped assessments, and Board roll changes. Contribution disclosure forms are not required.

2. Offers In Compromise

Items on this calendar are staff recommendations of Offers in Compromise in excess of \$7,500. Contribution disclosure forms are not required.

CHIEF COUNSEL MATTERS

The Chief Counsel schedules matters of interest, legal or tax policy on tax programs requiring Board discussion or approval.

J. Rulemaking

The Chief Counsel submits regulatory actions that do not require a public hearing for Board approval on the rulemaking calendar. Examples of matters placed on this calendar include: Section 100 changes, requests for adoption of revised language (15-day file), and requests for authorization to publish regulations that do not move through a committee. Additionally, Board Member requests or inquiries regarding rulemaking are placed on this calendar.

K. Sales and Use Tax

Board Member requests or inquiries regarding business taxes matters that require discussion or vote are placed on this calendar. Examples of matters on this calendar include local tax reallocations, streamlining projects, and delegations of authority.

L. Property and Special Taxes

Board Member requests or inquires regarding property and special taxes matters that require discussion or vote are placed on this calendar. Examples of matters on this calendar include, streamlining projects, delegations of authority, State Assessee procedures, Findings and Decisions, and Welfare Exemption Claims.

M. Other Chief Counsel Matters

Board Member requests or inquires that do not fit in the above three items are placed on this calendar. Examples of matters placed on this calendar include: miscellaneous Board Member requests, Taxpayers' Bill of Rights Reimbursement Claims decided without oral hearings, and delegations of authority.

ADMINISTRATIVE SESSION

The Board staff present reports on matters of interest and policy requiring Board discussion or approval.

N. Consent Agenda

Retirement resolutions, adoption of Board Meeting minutes, rate setting, and policy matters requiring Board approval appear on this agenda.

O. Board Committee Reports

Committee meeting minutes are presented to the Board for approval.

P. Other Administrative Matters

- Executive Director's Report—The Executive Director and staff's opportunity to report on matters of interest to the Board.
- Chief Counsel Report
- Deputy Directors' Reports
- Annual setting of unitary and nonunitary values of state-assessed properties.
- Other matters requiring Board action, including Board calendar/workload, approval of contracts over \$1 million, approval of finance letters, budget change proposals, and delegations of authority.

ANNOUNCEMENT OF CLOSED SESSION

The Chief of Board Proceedings announces the general nature of the item(s) discussed and recesses the Board Members into closed session.

Q. Closed Session

The Board Members may hold closed session during a regularly scheduled meeting for the following reasons:

- to confer with, or receive advice from, legal counsel regarding pending litigation;
- to consider the appointment, employment, evaluation of performance, or dismissal of a Board employee or to hear complaints or charges brought against a Board employee (unless the employee requests a public hearing);
- to consider matters pertaining to the appointment or removal of the Executive Director;
- to hear confidential taxpayer appeals or data; or,
- to hear settlement proceedings, which must be conducted in closed sessions.

OPEN SESSION

The Chief of Board Proceedings announces the general nature of the item(s) discussed, any action taken to appoint, employ, or dismiss a public employee in closed session.

PUBLIC COMMENT

The Board provides an opportunity for members of the public to directly address the Board.

ADJOURN

The Clerk of the Board then adjourns the meeting.

ADDITIONAL INFORMATION

Additional information provided on the public agenda notice:

- A link to subscribe to the notice electronically, at www.boe.ca.gov/agenda.
- The name, address, telephone number and e-mail address of a person who can provide further information prior to the meeting.
- Signature of the Chief of Board Proceedings.
- Information on accepting public comment with regards to committee meetings.
- Information on accepting public comment with regards to agenda items.
- Explanation of the "CF" designation next to items.
- Notice that the order of items on the agenda may be modified by the Chair.
- Notice that the location is accessible to people with disabilities and contact person if assistance is required.
- Notice to indicate which items have material linked on the Internet.